A SYSTEM OF THE Shipping and Navigation Laws OF GREAT BRITAIN: AND OF THE LAWS RELATIVE TO MERCHANT SHIPS AND SEAMEN; AND MARITIME CONTRACTS.

IN THREE PARTS:

I. OF THE SHIPPING AND NAVIGATION LAWS.
II. OF MERCHANT SHIPS AND SEAMEN.
III. OF MARITIME CONTRACTS.

TO WHICH IS ADDED,
AN APPENDIX OF ACTS OF PARLIAMENT, FORMS, &c.

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MARITIME CONTRACTS.

CHAPTER I.

ON CHARTER-PARTIES.

IN the progressive improvement of commerce, and the division of labour which necessarily followed upon it, the functions of the merchant were gradually separated from those of the navigator; and it appears that general trade was, accordingly, very early divided into the two main branches under which we at present see it; that of the merchant who exports and imports goods, and of the ship-owner who conveys them for him. Under these circumstances, therefore, the general relation of the ship-owner to the merchant is that of being the carrier of his goods for hire. From the importance of this employment, and the value and magnitude of the cargoes carried, this contract of hiring is always made by a special writing; that

Of the nature of a charter-party of affreightment.

is, by deed, or at least by a writing unsealed. This deed, or writing, has from very early times been designated by the name of a charter-party, a popular corruption of the Latin term *charta partita*, the ancient name of this contract in the early writers on the Law Merchant. (*a*) It appears to have been so called from the custom, in those times, of first writing the contract upon a large skin of parchment, which was then divided into two parts by being cut in an indented line from top to bottom, of which each of the contracting parties took one: as this indented line necessarily passes through some word, or figure, common to both parts, the exact tallying of the two parts upon relation and comparison was conclusive evidence of their original agreement and correspondence. The subject of the present chapter is the nature and form of this contract, its stipulations and parties.

A charter-party is, therefore, a contract for the letting to freight the whole or part of a ship, for one or more voyage or voyages. Such contract is universally in writing; but it is immaterial whether it be by deed, or writing under hand only. (*b*) The parties to a charter-

(*a*) Where persons, unconnected, load goods on board a ship, she is called, in popular language, a *general* ship; but when she is expressly let to hire to one or more, or to a company, such ship is called a *chartered* ship.

(*b*) A memorandum of a charter-party, or, in other words, heads of agreement for the formation of one, are as common between merchants as charter-parties themselves. In the former case, the agreement is not so specific or particular as a charter-party, nor is it under seal. It is, however, equally binding as if a more formal and solemn instrument had been executed; and is frequently the only written contract between the ship-owner and merchant. It is not material, therefore, whether the instrument purport to be a charter-party, or a memorandum, or agreement, for the hire of a ship. It will, perhaps, be unnecessary to observe, that these contracts, like all others, require no formula of words, but vary according to the circumstances of the case and the intention of the parties. The great chartered companies, and the public boards, have mostly forms of their own; and merchants are con-

party may be either the principals themselves, or their agents; that is, may be either the ship-owners and merchant, or the master and factor. If the charter-party be made at the place of the owner's residence, the former mode is the more usual. If the vessel be hired in a foreign port, the charter-party is usually made by the master for the owners. In the latter case, as no one can bind another by deed, unless previously authorised so to do by another deed to himself, the deed of the master, unless accompanied by a previous deed from the owners to such master, cannot bind the owners; or, at least, does not give the freighters a direct action against them grounded upon the instrument itself. Of the parties to a charter-party.

This point, indeed, came immediately before the Court of King's Bench, in Horsley *v.* Rush and another, (*c*) which was an action of covenant on a charter-party, to which the defendant pleaded the general issue. It appeared, in evidence, that the deed was executed by G. Dwyer, by order and for account of Messrs. Rush and Tolson, but that Dwyer had only a verbal authority from the defendants to execute the charter-party.—Lord Kenyon held that the action could not be maintained, for that a deed could not be executed by an agent so as to bind the principals, unless he were authorized by deed under seal; and that, though one partner might bind another by written instruments, he could not do so by deed, without a special power under seal for that purpose.

If a charter-party, therefore, be executed by a master for his owners, the merchant so hiring the vessel would act only with due caution in requiring the master to produce the power of attorney to himself, by which his owners have authorized him to enter into such a deed of charter-

stantly in the habit of varying their charter-parties, according to the nature of their trade, and the particular exigencies of each adventure.

(*c*) Cited in Harrison *v.* Jackson, 7 T. R. 207.

Of the parties to a charter-party.

party in their name. If the master sign a deed, without such previous authority from his owners, the deed of the master is his obligation only, and the merchant has no action against the owners. But the master, without any special authority, may make a contract of affreightment, in writing, not under seal, or verbally, to bind his owners; and they may be sued, as owners, for any breach of such contract, or omission of general duty.

It is another rule resulting from the nature of a charter-party as a deed, that in any action to recover upon the covenants therein contained, the declaration must be specially framed on the charter-party itself. Thus in Hunter *v.* Prinsep, and others, (*d*) it was decided. by Lord Ellenborough, that the plaintiff could not recover against the ship-owners upon special counts, framed upon the bills of lading signed by the master, because the defendants, having expressly contracted with the plaintiff under seal, could not be charged in respect of the same subject matter by a contract *not* under seal, signed by their master only, and not by themselves. And in any action at law upon a charter-party, whether by deed or by writing not under seal, such action must be brought in the name of the party to the contract, and not in the name of any one to whom he may have assigned his interest.

Thus, in Spildt *v.* Bowles, (*e*) where a charter-party was under seal, it was decided by the Court of King's Bench that the vendor, and not the vendee, must sue for the freight. And the decision was the same in Morrison *v.* Parsons, (*f*) where the charter-party was not under seal. The same decision was repeated in principle in Moores *v.* Hopper, (*g*) whence it may now be regarded as an established point, that an action on a charter-party,

(*d*) 10 East. 378. and see Atty *v.* Parish, 1 B. and P. New Rep. 104.

(*e*) 10 East. 279.

(*f*) 2 Taunt. 407.

(*g*) 2 New. Rep. 411.

whether by deed, or by writing under hand only, must be brought in the name of the parties to such contract.

A distinction between a deed *inter partes* and a deed poll.

A distinction, however, must be taken between a deed which is expressed to be made between certain parties on the one side, and certain other parties on the other side, and a deed which is not so expressed, but begins, "To all to whom these presents shall come," which is, in fact, the peculiar form of a deed poll. In a deed *inter partes*, no grant, or covenant, can be made with any other person than such as may be party to the deed; but in a deed poll, a grant, or covenant, may be made to any person, though not parties to the deed. In the deed *inter partes*, though a person not enumerated as one of the parties should be one of the covenantees, or obligees, and in that character should sign, seal, and deliver the deed; yet he is not competent to give a release, nor will his release bar the action of any one who is a party. Therefore, in an action brought by one Scudamore and others *v.* Vandenstone, (*h*) upon a charter-party by indenture, expressed to be made between the plaintiff and others, owners of a certain ship, whereof one Robert Pitman was master, on the one part, and the defendant on the other part, whereby the plaintiff covenanted with the defendant and Pitman, and the defendant covenanted with the plaintiff and Pitman, binding himself to them in a penalty for the performance of the covenants, and concluding, "In witness whereof the parties to these presents have put their seals, &c." Pitman having executed the indenture, the defendant pleaded in bar a release by him, but on demurrer the above distinction was taken and agreed upon; and it was adjudged that this release of Pitman did not bar the plaintiff, because Pitman was no party to the indentures. But if the indenture express that the master of the ship lets it to the merchant, with the consent of the owner, and then goes on to state that the merchant has entered into certain covenants, therein expressed with the owner; in this case the owner may bring the

(*h*) 2 Inst. 673. 2 Rol. Abr. 22. F. 1. S. P.

action on the covenants; though, unless such owner have sealed the deed, he cannot be himself sued upon it; the distinction being, that he is a party to the covenants of the deed, though not to the obligation; others have bound themselves by *deed* to him, and may be sued as bound by deed, but he has not so bound himself, nor can he be so sued by them. (*i*)

Of the usual form of a charter-party.

A charter party, in its most usual form, begins by specifying the parties between whom it is made, their character as master or owner of the ship, and the name, burthen, or tonnage, register measurement, of the vessel, and its situation at the time it is chartered. It then proceeds to let the vessel, or part of it, to the merchant, for the voyage or voyages, and to specify the freight either in a gross sum for the whole voyage, or a particular sum for every month or week of the ship's employment, or at so much *per* ton, cask, or bale of goods. The deed then stipulates, on the part of the owner, or master, that the ship shall be sea-worthy, and in a condition to carry the goods; and shall be provided with all necessaries for the intended voyage, both on departure and in the course of it: that the vessel shall be ready by an appointed day to receive the cargo, and shall wait a certain number of days to take it in; that, after having received her lading, she shall sail upon the destined voyage with the first fair wind, and shall deliver the goods (certain perils and accidents excepted) at the destined port, to the freighter or his assigns, in as good condition as they were received on board. On the part of the freighter he contracts to furnish a cargo, and to load and unload the goods within a reasonable time. The times stipulated for that purpose, commonly called lay or running days, are explicitly expressed, as well as the times appointed for the payment of the freight, and the manner of such payment, and the rate of demurrage *per diem*, in case of the vessel's detention beyond her lay or running days. The deed then generally concludes with a penal clause,

(*i*) Crooker *v.* Childs, 2 Lev. 74. and Lawes on Charter-parties, 11. and Gilby *v.* Copley, 3 Lev. 138.

binding the master or owner, and the ship tackle and furniture, and sometimes the freight, and the merchant and his goods, in a certain sum, to the performance of the several covenants in the charter-party.

But although these are the usual stipulations in a charter-party, there is nothing to preclude the owner on the one side, or the merchant on the other, from adding other special conditions, which, as before observed, is usual in ships taken up by commissioners for the public service, or by the directors of trading companies. In all such cases the master or owner is necessarily bound by his special stipulations. (*k*)

The first effect of the charter-party is, that as it binds the ship to the freighter, so it likewise binds the cargo to the ship, and gives the owners a lien on it for their hire in the first instance. This lien of the ship-owner on the cargo, of which we shall have occasion to speak more at large in the chapter upon freight, is founded on the same principle as the lien in the ordinary case of carriers; and would subsist by construction of law, although not expressed in terms, as is usual in the charter-party. But the Courts entertain great jealousy of the extent to which the power of holding in lien may be pushed; and upon this principle will not allow it to be exercised in any case, where the amount of the claim is not either fixed in itself, or may not be unquestionably ascertained by computation. Thus a lien cannot be sustained for any breach of covenant, of which the damages are unsettled, and which, therefore, can only be duly rated either by a jury or by an arbitrator. And in Phillips *v.* Rodie, (*l*) the Court of King's Bench would not admit a lien for demurrage, the charter-party not containing a clause to that effect.

Legal effect of the clause of lien in a charter-party.

The law of England, indeed, in all cases regards the

(*k*) See Beatson *v.* Shank, 8 East. 233.

(*l*) 1 Abbot. 191. and Birley *v.* Gladstone, 3 M. and S. 205.

The indorsee, or assignee, of a bill of lading, is bound by its terms; and the master may retain the cargo, by way of *lien*, or sue them for freight if they accept the consignment.

lien as an equitable right in the circumstances in which it allows it to be exercised; but as it is necessarily in itself a power of vindicating his own cause in the party exercising it, the courts strictly confine it to cases of a fixed and ascertained amount of damage. The case in which lien is chiefly exercised is, to enforce the payment of freight, where the merchant, who originally freighted the vessel, or the consignee, has become insolvent, and the assignees dispute the amount or conditions; or where the cargo has been transferred by the effect of law, or some subsequent contract, and the obligation of paying the freight has been transferred with it. But even in these cases the amount for which the ship-owner may hold in lien is limited by circumstances.

Cock *v.* Taylor.

The rule of law, however, both as respects lien and the action for freight, is administered with a very large equity in favour of the ship-owner. In Cock *v.* Taylor, (*m*) where the bill of lading made the goods deliverable to a consignee or his assigns, he or they paying freight for the same, and where the consignee assigned the bill of lading to a second person, who afterwards further assigned it to a third, it was holden that the third person was liable to an action for freight at the suit of the master of the ship. It was contended against the master, who brought this action for the freight, that this action could not be maintained against the assignees of the bill of lading. That the captain had a lien upon the goods for his freight; but if he chose to part with them, he could only resort to the contract on which the goods were shipped, and proceed against the original parties to the bill of lading. But Lord Ellenborough decided, that the last assignees of the bill of lading had adopted the contract by taking the assignment. They were aware on what terms the goods were delivered; and by accepting them they acceded to these terms. The bill of lading

(*m*) 2 Campb. 586. 13 East. 399. Wilson *v.* Kymer, 1 M. & S. 157.—See further as to the construction of these cases under the head FREIGHT.

may be considered as if in blank, and to have been filled up with the name of the person to whom the delivery is made. The liability is to devolve upon a floating appointee; and when he is determined, he is supposed to be a party to the bill of lading, and to enter with the master into the contract which is therein contained.

In a later case (*n*), the plaintiffs (in an action for freight) had chartered the ship Hind for a voyage from London to St. Domingo, and had agreed by the charter-party to provide a full cargo and pay freight at a certain sum per hundred weight of colonial produce laden. The ship having arrived at St. Domingo, took on board the destined cargo of coffee, shipped by a merchant of the name of D'Arcy, for which the master signed a bill of lading, making them deliverable "unto order, or to assigns, paying freight for the said goods as per charter-party." This bill of lading was indorsed by D'Arcy to Goodall; by him to Fletcher, his agent in London; and by Fletcher to Kymer, the defendant in the action; and which last indorsee immediately accepted bills to a considerable amount upon the credit of the consignment. Upon the arrival of the goods Kymer obtained possession of them under the bill of lading; but not being called upon for the freight for some months, he repaid himself the amount of his advances, and then paid over the balance into the hands of Fletcher, the agent of Goodall. The plaintiffs not being able to get the freight from Fletcher, who was the agent of Goodall, brought their action against Kymer upon the bill of lading. Mansfield, C. J. held that the action was maintainable, and that the plaintiffs were entitled to recover; the indorsee of a bill of lading and a consignee being effectually the same, and bound by the lien or condition of the bill of lading or cargo. Bell v. Kymer

In another part of this treatise we shall have occasion

(*n*) Bell and Kymer, 3 Campb. 545; and 1 Marshall, 116.—But see this case, *post*.

to consider more fully the nature of lien for freight. The course of our subject leads us only to touch slightly upon it in this place.

Of the penalties in charter-parties.

The penal clause, usually contained in charter-parties, is another remedy in aid of the ordinary law for enforcing the contract; and being regarded as an equitable obligation, reciprocal with both parties, it always receives an equitable interpretation; that is, it is considered as a fund, from which either party is to be paid the amount of any damage sustained. Upon the one part, more is not to be paid than the injury actually suffered; and, upon the other hand, less is not to be paid. If the damage exceed the penal sum, the parties are presumed to have made an error in their estimate of the possible amount of mischief, and not to have intended that a full equitable satisfaction should not be made. (*o*) Under this construction the penalty is not an absolute limit to the damages which may be recovered. Such damages will be awarded according to the injury, and not to the penalty. (*p*)

(*o*) Harrison *v.* Wright, 13 East. 343.

(*p*) In actions brought for the breach of covenants and agreements, there has sometimes been a difficulty in distinguishing between penalties and liquidated damages. The fair result of the cases seems to be this:—

First, Where a sum of money, whether in the name of a *penalty* or otherwise, is introduced in a covenant or agreement, merely to secure the enjoyment of a collateral object, the enjoyment of the object is considered as the principal intent of the deed or contract, and the penalty only as accessional, and therefore only to secure the damages really incurred. This rule has long been established in courts of equity; and the statute 8 and 9 William III. has introduced this practice, and affords the same benefits to defendants at common law; for it is no longer now matter of election in the plaintiff to proceed under this statute; the provisions are compulsory, and must be pursued.

Secondly, Where a deed contains covenants, or an agreement contains provisions for the performance of several things, and then a gross sum is stated at the end, to be paid upon the breach of performance, that must be considered as a *penalty*.

Thirdly, Where the payment of a smaller sum is secured by a larger, this is purely a *penalty*.

Fourthly, Where the word penalty

A charter-party being a deed, the effect of it commences from the delivery, and not from the date; and, therefore,

The effect of a charter-party commences from its delivery, and not from its date.

is specifically used, it is merely as a security.

Fifthly, A court of equity will relieve against a penalty, upon a compensation; and a court of law will not enforce it beyond the actual damage sustained; but where there is a covenant in a deed to pay a particular liquidated sum, neither a court of equity nor a court of law can make a new covenant for a man; nor is there any room for compensation or relief; as in leases containing covenants for ploughing up a meadow. If the covenant be "not to plough," and there be a penalty, a court of equity will relieve against the penalty, and direct an issue of *quantum damnificatus*. And, in an action of covenant at common law, a breach must be assigned, and the extent of the injury will be the measure of damages which the plaintiff will recover. But if it be worded to pay 5*l.* an acre for every acre ploughed up, there is no alternative; no room for any relief against it; no compensation; it is the substance of the agreement.

Sixthly, When the precise sum, therefore, is not of the essence of the agreement, the *quantum* of damages may be assessed by a Jury; but where the precise sum has been fixed and agreed upon by the parties, that very sum is the ascertained and liquidated damage; the Jury are confined to it, and the plaintiff cannot recover beyond it. For example, where a stipulated sum has been claimed for breach of a marriage contract; in which case it might not be possible to ascertain precisely what damages the person, in respect to whom the contract is broken, has sustained; and, therefore, the contracting parties agree to pay a stipulated sum; in such case, the sum stipulated is, by the convention of the parties, the *real* debt, and becomes due, *in integro*, on a breach of the contract.

Seventhly, But in all articles guarded by *penalties*, there are two remedies to be pursued at the option of the party injured; he may, as often as the articles are broken, have, *toties quoties*, an equitable relief upon the footing of the articles themselves for a partial breach of contract, or he may take the penalty. That is to say, where there is a penalty, and distinct covenants in the same deed, the party has his election, either to bring debt for the penalty, or an action in covenant for damages; in the former case the contract is rescinded, and the penalty becomes the debt in law; subject, of course, to such relief in equity, as the circumstances of the case may require, and to the restrictive provisions of the 8 and 9 William III. in a court of law. And if the penalty be paid, according to the stipulation of the articles, or be recovered as the debt in law, the party cannot resort back to his covenant, or

Of the commencement of the navigation of the charter-party.

in Oshey *v.* Hicks, (*p*) where the deed was dated the 9th of the month, but was not delivered till the 28th; it was decided that an accidental occurrence between the 9th and the 28th did not affect the obligations of the parties; though, if the same had happened on or after the 28th, it would have been within the matter of their stipulation. The time, indeed, at which the effect of all deeds commences, is, when they are concluded; and a deed can only be said to be concluded when it is delivered. The delivery, therefore, may be averred to be after the date; (*q*) and if it be impossible to give the charter-party effect by regarding the day it bears date as that of its execution, the party may aver that the instrument was made and concluded at a subsequent day. Thus, in Hall *v.* Cazenove, (*r*) where the charter-party was dated the 6th of February, but was not executed till the 15th of March, and which contained a covenant, on the part of the owner, that the ship should sail by the 12th of February; and a corresponding agreement upon that of the freighter that, in consideration of every thing above-mentioned, he would pay a certain freight, it was decided by the Court of King's Bench, that upon an averment of the voyage being performed, the owner might recover. The Court, indeed, professed to give their judgment upon three reasons:—the

action for the breach of the contract. But he may elect, in the first instance, to bring his action on the contract, (disregarding the penalty altogether as the fund for his indemnity,) and according to the nature, the extent, and *repetition* of the *breaches*, may recover even *beyond* the amount of the penalty in damages. Ponsonby *v.* Adams, 6 Br. Parl. cas. 418. Rolfe *v.* Peterson, 6 B. R. P. Cas. 470. Homan *v.* Walter, 1 Br. Cas. Chan. 418. Hardy *v.* Martin, *ibid.* 419. Lowe *v* Peers, 4 Burr. 2229. Cotterel *v.* Hook, Dougl. 101. Bird *v.* Randall, 1 Black. 387, and 373. Winter *v.* Trimmer, *ibid.* 395. Fletcher *v.* Dycke, 2 T. R. 32. Astley *v.* Weldon, 2 B. and P. 346. Smith *v.* Dickenson, 3 B. and P. 630. Harrison *v.* Wright, 13 East. 343. Wilbeam *v.* Ashton, 1 Campb. 78. Barton *v.* Glover, Holt's N. P. 43.

(*p*) Cro. James 263.

(*q*) Sone *v.* Ball, 3 Lev. 348.

(*r*) 4 East. 477.

first, that the covenant for the ship's sailing on or before the 12th of February was no condition precedent, but only an independent covenant, for breach of which the party had his remedy in damages; the second, that it was not of the substance of the contract, which was for performing the voyage for which the ship was chartered, and earning the freight; and, thirdly, that the voyage was rendered impossible to be performed, by the parties themselves not having executed the deed till after the time appointed for doing the act, and thereby dispensing with the performance of it. But the legal reason of the decision appears to have been principally the one abovementioned; that the deed was not to be deemed concluded until the day of its delivery.

Demurrage, and where it is due.

Some most important cases with reference to charter-parties have arisen under the head of demurrage, the proper interpretation of which is the compensation due to the ship-owners from the freighter, by reason of any delay or detention of the ship beyond the time expressed or implied in the contract. Demurrage, indeed, is nothing more than a kind of extended freight. But in order to meet the ordinary circumstances of some unforeseen delay in loading or unloading; it is usually specified in charter-parties that a certain number of days, called running days, shall be allowed for receiving, or discharging, the cargo; and that the freighter may detain the vessel for a further specified time, upon the payment of so much *per diem* for such over time. In many charter-parties the contract is, that the vessel shall be loaded and discharged in the *usual* time, or within a *reasonable* time after her arrival in port. In others, this condition is altogether omitted. In all these cases the courts of law will give a liberal construction to the charter-party; and will endeavour, as much as is possible, to understand the actual intentions of the contracting parties, and to give a corresponding effect to their deed.

Where the charter-party expressly stipulates that so

Of demurrage.

many days shall be allowed for the discharge of the cargo, and so many further days, at so much *per diem*, for any overtime, the Courts will interpret, that such a limitation is an express stipulation on the part of the owner that his vessel shall *in no event* be detained longer; and that, if longer detained, it shall be the delay of the freighter, and for which, as such, he shall make due compensation to the owner. Under these circumstances the freighter will be liable for demurrage, even where the delay is not incurred by any fault, but is inevitable, this being one of the cases where legal liability is not necessarily combined with fault or intention. Randall *v.* Lynch (*s*) is a leading case under this principle; having been first decided at Nisi Prius, and afterwards confirmed by the Court of King's Bench. But the principle of this decision being remote from popular reasoning, it deserves an attentive consideration. It was an action on a charter-party for a voyage to Lanceretto, and back to London, in which it was covenanted that the vessel, after taking in her lading, should proceed direct to the port of London, and upon arrival at the London docks, and after regular report at the custom-house, should discharge the said cargo, and there end and complete the voyage; that forty days should be allowed for unloading, loading, and again unloading the cargo, and that the freighter might further detain the vessel, at his option, for ten working days, upon paying five pounds per day demurrage. The breach alleged was, that the freighter had detained the vessel in the London docks for thirty-five days beyond the ten days last mentioned. The defence was in a narrative of the circumstances of the case. It appeared that the ship arrived from Lanceretto, in the London docks, on the 10th of August, in the year the action was brought, and was reported next day at the custom-house. The forty days stipulated in the charter-party for unloading the outward cargo, and loading and unloading the homeward cargo, expired on

In a charter-party, containing an express number of days for demurrage, the freighter is liable for all delay, even though not in fault, and inevitable.

(*s*) 2 Campb. 356. and 12 East. 179.

the 22d of August; but, on account of the crowded state of the docks, her discharge could not then be begun; and it was not finally completed till the 6th of October, being about thirty-one days after the expiration of the ten days during which time she might be kept on demurrage of 5*l.* per day. Under these circumstances it was contended by the counsel for the defendant, that this delay was not in any degree to be imputed to him, but to circumstances over which he had no control; and, therefore, that he could not be liable where there was neither wilfulness nor negligence. But Lord Ellenborough held, that the detention of the ship, arising from the inability of the London dock company to discharge her, was, in point of law, imputable to the freighter; that the person who hires a vessel must be considered as detaining her, if at the end of the stipulated time he does not restore her to the owner. He is responsible for all the various vicissitudes which may prevent him from doing so. While the goods remained on board the vessel in the London docks, it was impossible for the plaintiff to make any use of her; and to all intents and purposes she was there detained by the defendant. When she was brought into the docks all had been done which depended upon the plaintiff, and the dock company were the defendant's agents for her delivery. The defendant was as much responsible for a delay arising from the want of a birth, as if it had arisen from tempestuous weather or any other cause.

Demurrage in the case of a chartered ship.

Randall *v.* Lynch.

Randall *v.* Lynch was a decision under a charter-party but the same principle was laid down in the case of Leer *v.* Yates. (*t*) In that case a *general* ship took brandies on board, under bills of lading which allowed twenty lay days for the delivery of the goods in London, and stipulated for 4*l.* per day demurrage afterwards; certain of the consignees choosing to have their goods bonded, the vessel could not make her delivery at the London docks until

Demurrage in the case of a general ship.

(*t*) 3 Taunt. 387.

Leer *v.* Yates.

forty-six days after the twenty days; and some of the goods, which were undermost, could not, though demanded, be taken out, till the upper tiers were cleared. The Court of Common Pleas, notwithstanding, decided, that each of those consignees was liable, on a general count for demurrage, to pay the 4*l.* *per* day for the forty-six days.— MANSFIELD, C. J., in delivering the judgment of the court, says, "I was struck with the argument that it was not the fault of the defendant, but the fault of the plaintiff himself, that these goods could not be got out till other goods, which lay above them, were delivered. But it is not, in truth, the fault either of the plaintiff or defendant, that the goods could not be taken out. There can only be so many goods on the top of the vessel, as the proper stowage of the goods will allow; therefore, all the others must be at the bottom; and, as this is a general ship, and the goods do not all belong to the same consignee, the goods of some of the consignees must be undermost. If this argument would avail, therefore, that the captain is not entitled to demurrage for the goods which were not uppermost, it would restrain the contract for demurrage to the few persons whose goods were at top; but that construction would be contrary to the positive contract; for it is impossible to get out of the words of this bill of lading, which, though it be a singular species of contract, to bind a consignee by an instrument, signed not by himself, but by the captain; yet, as the consignors delivered the goods on board under that bill, and the defendants accepted that bill of lading, it is binding upon them; and, therefore, this action may be sustained on the general count for demurrage."

Whoever accepts goods, as a consignee, or indorsee, of a bill of lading, is liable to pay demurrage if it be due.

And in a subsequent cases Gibbs, C. J., determined, that any person taking goods under a bill of lading made himself liable to all its terms; and, therefore, to pay demurrage, if that were expressly stipulated. The principle, indeed, is one of the most manifest equity, that if the consignee accept the fruits of the contract, with a full

knowledge of the terms, he is bound by it, and cannot send the captain back to the consignor for demurrage. (*u*) Therefore, in Harman *v.* Gandolphi and others, (*x*) where a general ship took some silk on board to carry from Rotterdam to London, on defendant's account; and upon the margin of the bill of lading, (which he accepted) was written, "the consignee to clear the goods in fourteen running days after her arrival in port, or to pay 4*l. per diem* for demurrage;" the defendant applied for, and was ready to receive his goods within the running days; but, being undermost in the vessel, the delivery thereof could not be made till some days afterwards.—GIBBS, C. J., held, upon the authority of the preceding cases, that the plaintiff was entitled to recover demurrage, though he did not deliver the goods demanded within the time allowed. "The consignee," he said, "by taking to the goods, contracts with the owners of the vessel to perform the terms upon which they have undertaken to convey and deliver them. Those terms are expressed in the bill of lading; and the defendants, by claiming and receiving the silks, have acceded to those terms. Each consignee undertakes to clear away his goods within a certain time; and although, by the default of others, he is prevented from so doing, he is liable to pay demurrage by the terms of the contract, unless the delay be occasioned by the default of the captain or his crew. (*y*)

Harman *v.* Gandolphi.

(*u*) Jesson *v.* Solly, 4 Taunt. 52.

(*x*) Holt's N. P. 35.

(*y*) Several cases depended upon this decision, and a bill of exceptions was tendered upon the ruling of the Chief Justice; but it was afwards abandoned.

The decision in Lear *v.* Yates, and the cases which have followed upon it, seems to stand upon legal, and, properly understood, upon equitable principles. The hardship is incidental, and one of those rigours to which law, from the necessary generality of its provisions, is by its nature subject. The consignee, it is said, is ready to receive the goods in the proper time; he applies for them, and by the neglect of others, for whose conduct he did not stipulate, he cannot obtain them. The running days expire, and he is called upon to pay a heavy charge for demurrage. It is added, that this delay, so common, and indeed almost necessary, in the port of London, must have been in contemplation

A detention in a port by being frozen up is a demurrage, for which a freighter is liable.

Barret *v.* Dutton and another (*z*) is a later case, decided upon the same principle; and, if considered only by general reasoning upon the circumstances of the case, would appear still harder upon a freighter; the delay being rendered inevitable by a physical obstacle, and in

(*z*) 4 Campb. 333.

of the ship-owner; and, therefore, that the sufferance of it is an implied condition of his contract; that this inconvenience, and of course the understood condition, applies still more forcibly to a general ship, and is a misfortune pressing equally on both parties, the freighter and the owner. There is no ground for the presumption of a default in the consignee. Why should he be made responsible where he has no controul? Still less, why should he be made responsible for the default of all other consignees in the general lading? If an injury, why should not the owner distribute it amongst the several parties according to their respective interests? Why, indeed, is the owner entitled to any compensation Each party performs his duty in the contract. The consignee claims within the proper time, and the owner delivers the goods as soon as he is able. In order to entitle himself to compensation for demurrage, the ship-owner must claim under an express or implied condition, or by some positive default on the part of the consignees. With respect to default, none is presented; and with regard to the contract, the words which are supposed to create the obligation (we are here speaking of a general ship) are the words of the captain, the servant of the owner, who signs the bill of lading, and delivers it to the shipper. The consignee does not sign it; but it is said, that, by accepting this bill of lading, and claiming the goods under it, he accedes to the terms; and that, therefore, this action may be sustained on the general count for demurrage. It cannot be disputed that the acceptance of the bill of lading binds the consignee to pay the freight, and any demurrage occasioned by wilfulness, or neglect; but can it bind him to any terms which the owner or captain chooses to insert? At all events these terms are subject to an equitable construction, and cannot in any way be extended to what is manifestly unreasonable,—that of rendering one consignee responsible for the default of another, for whom he does not stipulate, and over whom he has no control.—Again, before the owner can call upon the consignee to answer in damages for a non-feasance, of what he morally could not do, he, the owner, must shew that he was ready to deliver; that the goods were in a situation to be capable of delivery at the

no degree occasioned by any wilful cause. It was an action by the plaintiff, a ship-owner, against the defendant, a freighter, founded on a charter-party, dated 6th of January, 1814, for a voyage from London to Heligoland, whereby "thirty running days were allowed for loading the ship at London, and discharging her at Heligoland, Demurrage.

time. This, at least, is a concurrent, if not a condition precedent.

The answer to this argument, which is undoubtedly very specious, and had for a long time considerable effect upon the commercial world, appears to be in substance; first, that between the owner of the vessel and the consignee of the goods there is no necessity for an express contract. Though there be no original privity of contract between the parties, yet the taking of the goods from the ship under the bill of lading is evidence of an agreement, in *ipso tempore*, to pay the freight, &c. according to the terms of the bill of lading, That the bill of lading, indeed, is not signed by the consignee, but is delivered to the shipper abroad, and by him *presumed* to be transmitted in due mercantile course to the consignee at home. By taking to the goods, such consignee accedes to the terms of the bills of lading under which he takes them, and concludes the contract by executing it. Dobbin *v.* Thornton, 6 Esp. 16. Cock *v.* Taylor, 13 East. 399. and Wilson *v.* Kymer, 1 M. and S. 157. Secondly, in ordinary cases where demurrage is claimed, the question is two-fold: Did the delay arise from the default of the freighter, or consignee? Was it the act, or *delictum*, of the owner himself, his captain, or his crew? But there is a middle case, that in which neither is in default; and in which the question is, which party is bound by the incidents of chance, or of any cause not within his own control. In this case (which is the one under examination) as the loss must be sustained by one party, the enquiry is, who is to bear it? And here we must have recourse to general principles. A person who hires any chattel, whether it be a horse, a carriage, or a ship, may be said to detain it, if at the end of the stipulated time he does not return it to the owner. He is responsible for all incidental circumstances which may prevent him from so doing. In the present case it is totally an indifferent circumstance that the ship is a general ship; all and every one, each singly for himself, is bound to clear within the stipulated time. If any one do not clear his goods, no matter from what cause (the ship being there with them,) he detains the vessel, and renders it impracticable for the owner to make use of her for other purposes. Any one, therefore, in this default, is liable for the detention of the

Demurrage.

and ten days on demurrage at *4l. per* day." The declaration alleged that the defendant detained the ship thirty-two days in loading and discharging her beyond the thirty running days. In point of fact, she was ready to take in her cargo on the 8th of January, on which day some goods were actually taken on board. A severe frost immediately after set in, and continued several weeks, during which time the river Thames was frozen over; the loading of the ship was rendered impossible, and she could not have sailed if she had been loaded. On the ice breaking up the loading was resumed, and completed on the 25th of February. The custom-house was then burnt down; and her clearances could not be obtained till the 9th of March, on which day she sailed. She was employed four days in discharging at Heligoland. A witness stated, that it was the business of the owner to procure the ship's clearances. Under these circumstances the plaintiff claimed demurrage from the 7th of February, when the thirty running days expired, to the 9th of March, when the ship sailed, together with the four days employed in unloading her at

vessel. Thus in Randall *v.* Lynch, 2 Campb. 352. it was determined by Lord Ellenborough, that if, by reason of the crouded state of the London docks, a ship is detained there before she can be unloaded a longer time than is allowed for that purpose by the charter-party, the freighter is liable for this detention to the owner of the ship.

The cause of detention, therefore, is immaterial, if the owner be not in fault. If it be incidental, it is an accident belonging to the consignee; it is his mischief, his loss, his misfortune. It is so much longer time beyond the contract taken from the owner; and being the casualty, if not the act of the consignee, he must pay for it. Though there may be no mutuality or privity between the consignees; yet, in regard to the owner, the delay or impediment of one is effectually the same as the delay or impediment of all.

In respect, however, to mercantile contracts, whatever may be the hardship in any particular case, the mischief will not be extensive, as contracts will gradually assume a form suitable to all possible contingencies. Indeed, since the above decisions, the terms in bills of lading have in many instances been varied, and have confined the claim of demurrage to a *wilful* or *negligent* detention of the vessel by the consignee.

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Heligoland; and contended, that as she was necessarily detained during all that time, the defendant was answerable, although the detention arose from circumstances over which he had no control. GIBBS, C. J., concurred in this reasoning, and held that the frost was no defence. There was an absolute undertaking, by the freighter of this ship, to load and discharge her in thirty days; and whether it was possible or impossible for him to do so from the state of the weather was totally immaterial. He had made a contract against all events, and he must abide by it. But the defendant was of course not liable for the detention of the ship at London, after the 25th of February, when her loading was completed, it having been the duty of the plaintiff to obtain her clearances; and as this had become impossible, from the custom-house having been burnt down, the detention in the interval was considered as belonging to the plaintiff and not to the defendant.

Demurrage.

The master is bound to obtain the ship's clearances.

In Thompson *v.* Wagner, (*a*) Lord Kenyon had before ruled that frost, completely blocking up the vessel, was no exemption from the claim for demurrage; and gave leave to move the court upon the point; but no motion was afterwards made, the principle being considered as established.

In Blight *v.* Page, (*b*) a case referred to by Gibbs, C. J., in Barrett *v.* Dutton, this principle was caried still further; it being decided in that case, that if a merchant hire a ship to go to a foreign port, and covenant to furnish a lading there, a prohibition by the government of that country to export the intended articles neither dissolved the contract, nor excused a non-performance of it.

Demurrage due in a case of detention for a cargo, under a prohibition by a foreign government to export the intended article.

(*a*) Sittings after Trinity Term, 1801. MS.

(*b*) 3 B. and P. 295. In this case it was observed by the court that demurrage would not be due if the captain *knew* of the prohibition before he entered the port whence he was to fetch his cargo, though demurrage was allowed by the contract.

The master is not bound to give notice to the consignee of the ship's arrival.

In the same manner, in Harman *v.* Clarke, (*c*) where it was stipulated that the goods were to be taken out fourteen days after arrival, or to pay eighty shillings a day demurrage, the defendant was held to be liable to the demurrage, though he pleaded that he had only failed in discharging the goods in due time, from ignorance of the ship's arrival, no notice having been given. But the Court held that no notice was necessary, the bill of lading itself (the ship being a general ship) containing an indorsement that the goods should be discharged within the time specified.

Demurrage due in the case of detention by port regulations or custom-house restraints.

In Hill and Others *v.* Idle and Others, (*d*) it was likewise held that the hirer was answerable for a delay arising from any internal regulation or custom-house restraint in the port of lading or delivery. The circumstances of this case were peculiar. It was an action by the ship-owner against the consignees, for not unlading a vessel from Oporto to London, within reasonable time. The goods consisted of sixty hogsheads, and eighteen cases of French wines. The ship arrived in the port of London on the 3d day of July, when it was found that the wines, from having been unshipped at Oporto, could not be landed without an order from the treasury. A petition for this purpose was instantly presented, and the defendants used the greatest exertions to have it expedited; but the order could not be obtained till the 4th of August, when the wines were actually landed. All the other goods had been discharged on the 8th of July. It was contended for the defendants, that they were not answerable for the delay which had thus arisen. Until permission was given by the Lords of the Treasury, the plaintiffs were as incapable of delivering the goods as the defendants of receiving them. But Lord Ellenborough said, that if a freighter ship goods which require a special order for their landing, he must relieve the ship-owner from the difficulty he occasions; and after a reasonable

(*c*) 4 Camph. 159. (*d*) 4 Camph. 327.

time for the discharge of goods requiring such order, the delay is the freighter's till the order is obtained.

Demurrage due, though occasioned by the unlawful act of custom-house officers seizing goods.

Upon the same principles it is no defence to an action for demurrage, that the delay in unloading the ship arose from the act of custom-house officers, in unlawfully seizing a part of the cargo. In Bessey *v.* Evans, (*e*) the ship was let by the plaintiff to the defendant for a voyage from Heligoland to London, under an agreement that the defendant should be allowed thirty days for loading and unloading the cargo, and should pay three guineas a day demurrage for every day beyond that time. The whole of the cargo was unloaded in the port of London, within the running days, except four barrels of pitch, which the officers of the customs would not permit to be landed till seventeen days after. There was nothing illegal in the importation of the pitch, and the interference of the custom-house officers was altogether unauthorized. Under these circumstances, it was contended for the defendant, that he could not be liable for the wrongful act of the custom-house officers in detaining the ship. But Lord Ellenborough said, that the defendant was manifestly liable for demurrage; the illegal detention of the ship by the custom-house officers being a casualty of the voyage, and the casualty of the voyage necessarily belonging to the hirer. He had his remedy against the custom-house officers, but the ship-owner must seek his satisfaction from him.

Freighters, under bills of lading, are subject to the same demurrage as freighters under charter-parties.

As respects demurrage, the freighter, by virtue of a bill of lading, is liable upon the same principles with the merchant under the charter-party; there being no effectual difference between a charter-party and a bill of lading, except that a charter-party is a deed hiring the whole ship, whereas a bill of lading is an acknowledgment by the ship-owner or master of the hire of freight for particular parcels. We shall treat more fully of bills of lading in the sequel. It is sufficient, therefore, to observe, as respects the present point, that

(*e*) 4 Campb. 131.

with regard to any demurrage, the freighter under both is subject to the same liabilities. And, therefore, in Harman *v.* Mant, (*f*) where the bill of lading was indorsed with a notice to the consignees, that the goods were to be taken out within fourteen days after her arrival, but the consignees pleaded in defence, that they had no other notice of this limitation but the indorsement on the bill of lading, it was decided by the court that such notice was sufficient, and that it was unnecessary for the captain or ship-broker to send any particular notice of the arrival of the vessel.

The courts of law, indeed, in all cases, have a due consideration of the value of the ship, and of the loss and expence to the owners by her detention; and, under this principle, they favour demurrage as an equitable claim. Ship-owners are the public carriers by sea ; and having upon their part all the onerous liabilities, the law gives them, as respects the merchant-freighter, all the equitable rights. The analogy between the ship-owner and the carrier is indeed so close, that many of the most important cases daily arising between freighters and owners, would receive a familiar illustration, and would be brought nearer to popular apprehension, by being compared with parallel circumstances in cases between carriers and their employers, or between the hirers and letters of vehicles and modes of conveyance. The principle of liability exactly corresponds in both relations. Thus we have seen that the hirer of a vessel is always regarded as the person who detains it. Thus the casualty of the voyage, as to delay, is the casualty of the merchant freighter under charter-parties. Thus he who hires for a time limited, or expressed, is liable, without any fault or negligence, for any delay beyond the time specified. If we were to proceed in a comparison of the rules and principles under each of these relations, through the whole capacity of each, the same

(*f*) 4 Campb. 161. See Leer *v.* Yates, 3 Taunt. 387. and Harman *v.* Gandolphi, *ante*, p. 17.

correspondence would appear, so much so, indeed, as to render the law of bailment and the law of charter-parties nearly the same.

What will be demurrage under a stipulation in the charter-party, that the vessel shall unload in the usual and customary time.

The greater portion of charter-parties contain, as above said, an allowance of so many specified days for loading and unloading; and so many further days, for which the charterer, if he detain the vessel, shall pay at the rate of so much *per* day demurrage. Under this express stipulation the law is as has been above stated. But in other charter-parties the condition is, that the ship shall be unloaded and discharged within the usual and customary time of ships in the port of delivery and discharge ;—or simply, within the usual and customary time. Under a charter-party containing these terms, it has been decided that the freighter is not liable for any delay which may arise from the ordinary course of business in the port or custom-house of the place of discharge. Accordingly, if a freighter, by a charter-party so expressed, shall have the vessel detained in waiting for his turn of discharge, either from the crowded state of the port, or from the routine of business in the bonded warehouses, such delay is held to be within the usual and customary course of such ports, and he is not responsible for it to the owners as demurrage. Since the construction of docks for different branches of trade, and since the institution of bonded warehouses, such delays are frequent and unavoidable; and as the courts presume such course of business to be well known, both to the merchant and to the ship-owner, they give a corresponding interpretation to the terms of the charter-party, where, by the omission of a time expressly limited, they will admit of such construction.

Rogers *v.* Forrester.

A charter-party, expressed in these terms, came before the consideration of the court, in Rogers *v.* Forrester (*g*) which was an action on a charter-party, in which it was covenanted between plaintiff and defendant, that the defendant, being the freighter, should unload the ship

(*g*) 2 Campb. 483.

Demurrage. within the usual and accustomed time. The alleged breach of this covenant was, that although the usual and customary time to unload the said ship in the port of London amounted to seven days next following her arrival, the freighter detained the ship forty-nine days over and above such usual time. It appeared from the circumstances of the case, that the Margaret actually entered the London Docks with her homeward cargo on the 25th of August, and was reported the following day. On the 31st of the same month the wines were bonded by the defendant; and he was ready to have received them, if they could have been unloaded. But, on account of the crowded state of the London Docks at this time, the ship could not get a birth till the 20th of October, and was not fully discharged till the 26th of that month. If the duties had been immediately paid upon the wines, they might have been landed in a much shorter time; but the superintendant of the London Docks said, he had never, since the bonding system was introduced, known a cargo of wines, brought by a ship so large as the Margaret, landed and delivered; such cargoes had always been bonded. It was contended, on the authority of Randall *v.* Lynch, that the freighter was liable for the detention of the ship in the Docks beyond the time when she might have been discharged, had the duties been immediately paid. But Lord Ellenborough said, that in that case a specific period of forty days had been fixed by the charter-party for loading and unloading the cargo. But that the stipulation in the present case was, that the freighter should be allowed *the usual and customary time* to unload the ship in her port of discharge. The question, therefore, was, what was the usual and customary time for a ship to unload a cargo of wines in the port of London? The answer seemed to be, when the ship gets a birth by rotation, and the wines can be discharged into the bonded warehouses. The wines might have been landed sooner by an immediate payment of the duties; but since the bonding system was introduced, this had ceased to be the usual and customary mode of unloading such a cargo. Lord

Ellenborough was therefore of opinion, that the defendant had not broken the implied covenant, arising from the terms of the charter-party, to unload the ship in the usual and customary time for that purpose at her port of discharge, and that he was not, therefore, liable for any delay.

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If the charter-party contain no stipulated time within which the cargo shall be unloaded; if it neither specify a particular number of days, nor employ any general terms, such as "within the usual and customary time of unlading at the port of discharge," or "within a reasonable time," or words of the like import, in this case, the implied contract on the part of the charterer is, to discharge the ship in the usual and customary time for unloading such a cargo. A charter-party of this kind, or rather a bill of lading, was so interpreted by Chief Justice Mansfield, in Burmester *v.* Hodgson. (*h*) The defendant was consignee of a cargo of brandy, brought from Charente to London, by the ship Athalia, of which the plaintiff was master. In the bill of lading, there was no stipulation whatever for demurrage, or for unloading the brandy in any particular time. The ship entered the London Docks on the 19th of August, 1809; but as the Docks were extremely crowded, and the brandies were to be bonded, she was not able to begin to unload till the 11th of October, and did not discharge the whole of her cargo till the 19th of the same month, making a period of sixty-three days from the time she entered. It appeared to be the invariable practice to bond cargoes of this sort. Even when the cargo is bonded, if the Docks are not over crowded, twenty or twenty-three days are a sufficient space of time for unloading. The plaintiff, therefore, insisted that he was entitled to a compensation in the nature of demurrage, from the time the ship might have been unloaded, till she was completely discharged. Mansfield, C. J., was of opinion that this could not be distinguished from Rogers *v.* Forrester. Here the law could

Demurrage where no time is mentioned in the charter-party.

(*h*) 2 Camp. 488.

only raise an implied promise to do what was there stipulated for by an express covenant, namely, to discharge the ship in the *usual and customary time* for unloading such a cargo. That has been rightly held to be the time within which a vessel can be unloaded, in her turn, into the bonded warehouses. Such time has not been exceeded by the defendant. If the brandies were to be bonded, they could not be unloaded sooner, and the defendant seems to have been as anxious to receive as the plaintiff was to deliver them. (*i*)

Demurrage not due for delay by sea and winds.

There are two main circumstances, however, in which demurrage can never be claimed against the freighter; the first, in the case of the hostile detention of the ship, or, what is equivalent to it, the hostile occupation of the intended port; and, secondly, in the case of accidents by winds and sea. (*k*) The general rule, indeed, here strictly implies, that the accidents of the sea belong to the ship, and the delays of the port to the freighter. Upon the same principles, the payment of demurrage, stipulated to be made while a ship is waiting for convoy, ceases as soon as the convoy is ready to depart; and such payment, agreed to be made while a ship is waiting to receive a cargo, ceases when the vessel is fully laden, and the necessary clearances are obtained, although the ship may, in either case, happen to be further detained by adverse winds or tempestuous weather. And if, after having once set sail on her voyage, she is driven back into port, the claim of demurrage is not thereby revived. (*l*)

The price or rate of demurrage is generally fixed by

(*i*) Evidence of usage is admissible, to shew that where a vessel is to be discharged within fourteen days, or to pay five guineas a day demurrage, *working* days, and not *running* days, are to be understood. Cochran *v.* Rethbergh, 3 Esp. 121. per Lord Eldon.

(*k*) Liddiard *v.* Lopes, 10 East. 526.

(*l*) Lannoy *v.* Werry, 2 Bro. P. C. 60., Jamieson *v.* Laurie, 6 Bro. P. C. 474. Abbot, 196.

the charter-party; and is therein stipulated, in most cases, to be payable at so much *per* day. If the ship be detained beyond her days of demurrage, as specified in the charter-party, the sum payable *per* day, under the charter-party for the demurrage there allowed, is *primâ facie* the measure of compensation for the extended time. But it is open to the ship-owner to shew that more damage has been sustained, and to the freighter to shew that there has been less than would thus be compensated. In covenant upon a charter-party, for detaining a ship beyond the stipulated time of demurrage, the plaintiff claimed a compensation for the extended time, at the rate mentioned in the charter-party for the stipulated days of demurrage, and the defendant only paid into Court half that rate. Lord Ellenborough left it to the jury to say, whether the owner was entitled to so much as he claimed; and the jury found for the plaintiff, at the rate of 7*l.* *per* day, upon the principle above stated; eight guineas a-day being what the plaintiff claimed, and the defendant only having paid into Court at the rate of 4*l.* (*m*)

The rate of demurrage is what is expressed in the charter-party; or will be assessed by the Jury upon evidence of the usage of merchants.

If no rate of demurrage be expressed in the charter-party, there is no direct custom of trade to fix it. It may be regulated by the burthen of the ship, by the quantity of goods she is freighted to carry, or the damage which she is likely to receive from remaining in the port where she is detained, or the loss sustained by not being able to employ her in another service, or the like. The Court will be governed by the opinions of mercantile men, conversant with such subjects, as to what may be a reasonable compensation for the use of the ship for the time, and under the circumstances she is detained.

When by the charter-party, or bill of lading, the freighter covenants with the master to unload the cargo in a certain number of days generally, or pay demurrage, it means

Working days do not include Sundays, or custom-house holidays.

(*m*) Moorson *v.* Bell, 2 Campb. 616.

working days, and not running days; (*n*) though it is best to express in the contract which is meant, and that is usually done to avoid all disputes upon the subject, especially as witnesses called on such subjects are likely, either from ignorance or dishonesty, to differ in their testimony.—Working days, it seems, do not include Sundays, or custom-house holidays, but only such days as are, in the literal sense of the word, working days, in work of a similar nature. When there is a doubt upon the language of contracts of this sort, it must be explained by the usage. Accordingly, where a question of this nature came before Lord Eldon at *Nisi Prius*, he left the question to a special jury of merchants; and they found a verdict for the defendant, construing the general words of the contract to mean working, and not running days. "If," said his Lordship, "no evidence had been offered, and I was to decide on the clause itself, I should have been of opinion it meant running days; and if so, the parties must abide by the contract, though incapable of performance. If it had been the case of inland trade, it must have meant working days, as the law of the country prohibits the working on any other."

Principles which the law has followed in giving a liberal interpretation to charter-parties.

We shall employ the sequel of this Chapter in explaining some of those rules and principles which the law adopts in interpreting the intention of the contracting parties in charter-party. It may be generally premised, that with a view to the interest of trade, and to the exigencies of merchants in remote parts, the law gives as liberal a construction to these deeds as is possible; and, occasionally, in favour of the manifest will of the parties, dispenses with a rigid exaction of the rules of law as to the construction of deeds. But this indulgence of course is never extended so far as to trespass upon the great principles of the law, nor to pursue the particular equity of one class of cases at the expence of the certainty and precision of law in all.

(*n*) Cochran *v.* Rethbergh, 3 Esp. 121. See this case cited *ante*, p. 28.

With this observation we shall proceed to state some of the chief cases, and explain the principle upon which they have been decided.

Construction of charter-parties.

White *v.* Parkin.

In White *v.* Parkin, (*o*) the parties had entered into an agreement by charter-party, that the ship should take in her lading in some port in the British channel; but they afterwards entered into a parol engagement, that the ship (which was at that time lying in the Thames) should immediately commence her lading, and should pay hire to the ship-owner from the day of such commencement. The Court held, under these circumstances, that such parol agreement was binding, inasmuch as it did not contradict, nor was inconsistent with, the charter-party. Lord Ellenborough observed, that though parties could not dispense by parol with the performance of any of the covenants in a deed, there could still be no objection to an earlier inception of the service than that which was covenanted for under the deed. A parol agreement must not contradict a covenant under deed, but it may assist or precede it.

Johnson *v.* Greaves.

In Johnson *v.* Greaves (*p*) an action was brought against the charterer, for having procured an insufficient licence, under which the vessel was seized and detained, but afterwards restored. But as it appeared upon the trial that no licence was actually necessary for the voyage, though the merchant and ship-owner, under a misconception, had contracted for one in the charter-party; it was held by the Court that, as no licence was necessary, the merchant was not answerable on the covenant for the consequences of an alleged insufficient licence. Upon the same principles of equity, in Havelock *v.* Geddes, (*q*) when the merchant had conditioned with the owner that an extra number of men should be taken at his expence to work the

Havelock *v.* Geddes.

(*o*) 12 East. 578. and see *post.*
(*p*) 2 Taunt. 344.
(*q*) 10 East. 555.

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ship, but that he (the merchant) should not be called upon to pay them, until the ship's discharge, or return from her voyage; the ship being accidentally burnt in the West Indies, the Court held that the merchant was still liable.

Davidson v. Gwynne.

Again, in Davidson *v* Gwynne, (*r*) where it was conditioned in the charter-party that the merchant should have the disposal and direction of the ship, but where the master, upon leaving the port of London, signed bills of lading for delivering his cargo at Lisbon, and thereby made himself answerable for such delivery, it was holden by the Court that the merchant could not afterwards change the direction of the ship to Gibraltar, without giving up the bills of lading to the master, or at least offering a sufficient indemnity against any claims that might be made upon him by the holders thereof.

In the charter-parties of earlier times, it was a very usual clause that the ship should sail with the first fair wind. In Constable *v.* Cloberie, (*s*) the defendant pleaded against the payment of freight, that the ship had not so sailed, but had waited some days; not, however, imputing any unreasonable delay, but merely negativing the circumstance that the ship had sailed with the first fair wind. The Court held that the substance of the contract must be understood as conditioning against delay, and not that the ship should sail with the next wind, which changes every hour, and that the merchant must pay the money.

Upon the same principles of equitable interpretation, if there should be a breach of any covenant in a charter-party, the Courts of law will consider such breach according to its peculiar nature and circumstances; they will not judge the contract to be annulled by the violation of some immaterial covenant; but will consider, under all the circumstances, whether such covenant be a condi-

(*r*) 12 East. 381. (*s*) Palmer 397.

tion precedent, or a condition subsequent, whether its subject matter affects the whole consideration, or whether it only impairs and diminishes, takes away some advantage, or attaches some inconvenience and loss to the interest of the party affected by such breach. In the first case, that is, where the condition broken is a condition precedent, the Courts will of course adjudge it to be a total failure of the agreement, and therein a forfeiture of all the stipulations under it. But where the breach only partially affects the main consideration, and can be compensated in damages, the Courts will require it to be made the subject of a cross action.

To a condition, precedent or subsequent, no technical words are necessary: whether a condition be precedent or subsequent depends upon the nature of the transaction, and the meaning of the parties.

Every breach of covenant does not annul the contract. Distinction of conditions precedent and subsequent.

The case of Bornman and Tooke (*t*) was decided upon this principle. It was an action for freight, by a ship-owner, against a merchant who had hired a ship upon a charter-party, in which it was covenanted that the ship should take in its full load of timber with all possible expedition at Riga, and should thence sail "with the first favourable wind" direct to Portsmouth. The ship arrived at Portsmouth, and delivered its cargo, which was accepted by the merchant. But the merchant refused to pay the freight, under the allegation that the ship had not sailed direct from Riga to Portsmouth, but had unnecessarily put into Copenhagen, where she was detained until that place surrendered to the English arms; and in consequence of which deviation he had been obliged to have fresh insurances upon the cargo. Lord Ellenborough decided that this was no condition precedent, but only a general stipulation, that there should be no unneces-

(*t*) 1 Campb. 377. See likewise Ritchie *v.* Atkinson, 10 East. 295. and Davidson *v.* Gwynne, *ante*, and 12 East. 381.

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sary delay; and that, if there were any, the merchant should be compensated according to the circumstances. To hold, indeed, that any short delay in setting sail, or that any trifling departure from the direct course of the voyage, would entirely annul contracts of this kind, and leave ship-owners without remuneration who had actually brought the cargo, would be to introduce a rigour fatal to all contracts of this kind. His Lordship concluded with observing, that if the merchant had suffered any loss, or had been put to any extraordinary expence, he should have made it the subject of a cross action. The distinction was, where the covenant went to the whole consideration, and where it only affected it partially. Where mutual covenants go only to a part of the consideration, and a breach may be compensated in damages *pro ratâ*, there the party injured, having the means of remedy on his covenant, shall not plead it as a condition precedent.

Thomson *v.* Inglis.

Thomson *v.* Inglis (*u*) was determined upon the same principle. In this case the defendant, the charterer of a ship, had covenanted to load and dispatch her from Tobago, in the West Indies, so that she might sail with the convoy appointed to depart from thence the first of August. The ship arrived in Tobago on the 8th of July, and was ready to take in the homeward cargo on the 14th, and might have taken in her whole cargo within a week if it had been ready. But on the 22d of July, when she had taken in only a part, the convoy sailed; and the captain, deeming himself bound in duty to consult the safety of the ship, sailed with it, though an offer was made by the merchant of a complete cargo, if he would stay a few days longer. Under these circumstances the ship-owners brought an action against the merchant for the whole freight upon the covenant. The merchant pleaded in defence, that he had covenanted only to have the cargo ready by the first of August, and that it would have been ready

(*u*) 3 Campb. 428. See likewise Hotham *v.* E. I. Company, 1 T. R. 638.

by that day. But Lord Ellenborough held that this was no defence. Such covenants must have a reasonable construction, which was, that the ship should be loaded so as to depart with the convoy appointed to sail on the first of August; but which, in fact, might sail a day sooner or a day later; that is, on or about that time: the merchant, therefore, was bound under this stipulation to load the ship in time, if it arrived in time. The ship had arrived in time, and the merchant had failed. Construction of charter-parties.

It is unnecessary to explain the principle of these decisions by further cases of the same nature, as they all proceed upon the same point, of the actual intention of the parties, or of the degree and kind of breach of covenant as regards the main consideration of the contract. Thus, in the above case of Thompson *v.* Inglis, if the ship had not arrived in time, the breach would have been upon the part of the ship-owner; and though the merchant must have paid freight for what the vessel actually brought, and could not have pleaded the breach of covenant as a total discharge from his obligations under the charter-party, he might have brought a cross action for the injury sustained, and would have recovered according to the amount proved. But, in Shadforth *v.* Higgin, (*v*) where a ship was freighted to go in ballast to Jamaica, and bring home a cargo from thence, and the freighter undertook to provide a full cargo for her in time for the July convoy, provided she arrived in Jamaica by the 25th day of June, but the vessel did not arrive till some days afterwards, it was held that such *fixed time* was a condition precedent, and was to be considered as the farthest time which the party would grant; and that under these circumstances the merchant freighter was entirely discharged from his contract to furnish a cargo.

The principle of the decision in both of the above cases

(*v*) 3 Campb. 385.

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is obvious. In Thompson *v.* Inglis, the exact point of time was merely secondary; the main and primary object of the parties was, that the ship should be loaded in time for the convoy, on *whatever* day it should sail. But in Shadforth *v.* Higgin the time was manifestly a primary consideration, being the furthest day which the merchant could allow. The different decisions in the two cases originated in this difference of circumstances.

Havelock *v.* Geddes.

One of the points decided in Havelock *v.* Geddes (*x*) proceeded upon the same equity as respected the time of repairing a ship. In this case the ship-owner had covenanted in the charter-party, that the ship should, at his expence, be forthwith made tight and strong for a voyage for twelve months to foreign parts, under which covenant the merchant immediately put his cargo on board. Upon the return of the vessel the merchant refused to pay the freight, alleging that the owner had not *forthwith* duly made his vessel tight and strong, in consequence of which she had been compelled to stop at Portsmouth to repair, and he had been delayed in the receipt of his cargo. But the Court held that he was liable to the freight for two reasons; in the first place, because he had accepted the ship in the condition in which it was immediately after the charter-party, and put his goods on board. And, secondly, because the freighter had performed the voyage, though perhaps imperfectly; but that if the merchant had sustained any damage in consequence of such imperfect performance, he might receive satisfaction in damages by a cross action. The same point was again ruled by the Court, in Ritchie *v.* Atkinson, (*y*) to which we had before occasion to refer upon another subject. The plaintiff, in this case, had not taken on board the whole cargo for which he had covenanted in the charter-party; but having taken part, and safely delivered it at home, he brought an action against the merchant for the freight of such part.

Ritchie *v.* Atkinson.

(*x*) 10 East, 555. (*y*) See *ante*, and 10 East, 295.

The merchant refused to pay any freight under the alleged breach of covenant. But the Court held that, having performed some of the service, he was entitled to the specific remuneration agreed upon, and that the merchant must bring a separate action for the breach of the covenant.

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When there is a total failure of consideration, and no part of the service rendered, the Courts of law will hold that it is a total breach of the contract. But where the merchant has received some benefit, and the owner, although he may not have performed the whole of his duty, has rendered some service by the performance of a part, the courts of law will give a remuneration, *pro ratâ*, for such part, and, as before said, refer the merchant to his cross action for the particular breach.

But this principle of the equitable interpretation of contracts is necessarily limited by certain maxims to which the Courts of common law rigidly adhere, and beyond which they will not explain nor correct the letter of charter-parties. In cases exceeding the possible limits of this indulgence, the parties, if they suffer any consequences which they did not intend, or foresee, must take the consequence of their own ignorance, or negligence, in the construction of their deeds, and must not expect to receive relief at the expence of the established principles of law. The same rule will apply where the specific stipulations of a charter-party, though manifestly hard and unequal, are the express and positive engagements of the parties; such as where they are obligatory upon one party, and optional to the other. Therefore, in Shubrick *v.* Salmond, (*z*) where the master of the ship had absurdly agreed to reach an island on a day certain, and that if he arrived upon that day, the merchant should be *absolutely* bound to give him freight, but if later, that it should be optional with the merchant

The Court will not relieve against express and positive stipulations, though *per se* hard and absurd.

(*z*) 3 Burr. 1637.

whether he should lose the whole voyage, the Court held that as he had made the engagement, he must abide by it.

A contract of charter-party is broken by even an innocent non-performance where it affects the whole contract,—where the thing is not imperfectly done, but not done at all.

Upon the same principles, though the courts of law, in the event of any partial breach of covenant, will not suffer the ship-owner to lose the reward of the greater portion of the service which he may have performed, they will still not extend this indulgence to cases in which a breach, apparently partial, goes to the whole and main object of the voyage; and, therefore, in Osgood *v.* Groning, (*a*) where the failure of the performance, though well intended, went to the root of the contract, it was adjudged by the court to be a non-performance of the whole contract.

Whether mutual stipulations in a charter-party are, or are not, dependent one on another; and, therefore, whether or not an action lies for one party without previous performance or offer to perform the stipulations on his side, depends on the nature of the case under consideration. In the construction of such contracts, conditions are to be taken as precedent, subsequent, or independent, according to the fair intention of the parties, (to be collected from the instrument) and technical words, encountering such intention, must yield to it. (*b*) Thus where, by charter-party between the ship-owner and freighter, the ship-owner covenanted to proceed from London to Naples, and there to deliver the outward cargo; and, *having so done*, to receive on board a return cargo, restraint of princes excepted; and the freighters covenanted that they would provide, at Naples, a full and complete return cargo; and that 1750*l.* should be paid on delivery of the outward cargo, which should be considered as earned for *outward* freight; the Court of K. B. held, that in covenant against the freighters for not providing a return cargo at Naples, they could not plead, in excuse of performance, that the *outward* cargo was seized by the go-

(*a*) 2 Campb. 466. (*b*) Storer *v.* Gordon, 3 M. and S. 308.

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vernment at Naples, and was delivered to them, for the delivery of the outward cargo was not a *condition precedent* to the providing a return cargo; but the delivery of the outward cargo was a condition precedent to the payment of the 1750*l.*; and, therefore, a breach assigned for non-payment thereof was, under these circumstances, not sustainable. (*c*)

An offer by one party, with an immediate ability of performance, to perform a condition precedent in a charter-party, with a refusal to accept it, is equivalent to performance. (*d*) And where the performance of a condition precedent, on the precise day stipulated, is rendered impossible, from the deed having been executed after the day;—it seems that the right arises by a subsequent performance. But where, by the terms of a charter-party, freight was reserved monthly, and payable on the arrival of the ship in her port of discharge, an offer by the owner to perform the voyage, and refusal by the freighter, are not equivalent to actual performance. (*e*) The non-performance of a covenant by the owner to make the ship tight for a voyage of twelve months, gives the merchant an option of repudiating his contract; and is not a condidion precedent to the recovery of freight after the freighter has taken the ship into his service, and used her for a certain period. (*f*) So, likewise, sailing with the first convoy is not a condition precedent, unless expressly made so: (*g*) and *semble*, that where the freighter covenants to pay freight in consideration of the covenant by the owner in the charter-party, (one of which is, that the ship shall sail on or before a certain day,) it is not a condition precedent. (*h*) So, where the agreement was, that the master

(*c*) Storer *v.* Gordon, 3 M. & S. 308.

(*d*) Hotham *v.* E. I. Company, 1 T. R. 638.

(*e*) Hall *v.* Cazenove, 4 East. 477. and Smith *v.* Wilson, 8 East. 437.

(*f*) Havelock *v.* Geddes, 10 East. 555.

(*g*) Davidson *v.* Gwynne, *ante*, p. 32. and 12 East. 381.

(*h*) Hall *v.* Cazenove, 4 East. 477. and ante, p. 32.

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should load a *complete* cargo, and proceed and deliver the same on being paid freight, at so much *per* ton, it has been determined, that the delivery of a complete cargo was not a condition precedent to the right of freight. (*i*)

Under this head of the construction of charter-parties, several cases have arisen which involve principles not peculiar to this species of contract; and, therefore, need only be slightly touched upon in this place. Thus, where, by the terms of a charter-party freight was paid in advance, and without the master's fault the voyage was not performed, and the ships captured, it has been decided that the money cannot be recovered back. (*k*)

If the performance of a contract become impracticable, through the act of God, and there is no provision therein exonerating the contractor from performance under such circumstances, he must answer for the breach of it in damages. (*l*) Thus a freighter, who covenants generally to load a cargo, and is prevented from so doing by the prevalence of the plague, is liable on his covenant. (*m*)

Here, indeed, the principle is obvious: the freighter is the adventurer who chalks out the voyage; and is to furnish, at all events, the subject matter out of which freight is to accrue. If the performance of his covenant be rendered unlawful by his *own* government, the contract is, of course, dissolved; but if, in consequence of events which happen at a foreign port, the freighter is prevented from furnishing a loading which he has contracted to furnish, the contract is neither dissolved, nor is he excused for not performing it, (*n*) but must answer the breach in damages.

(*i*) Ritchie *v.* Atkinson, 10 East. 295.

(*k*) De Silvale *v.* Kendal, 4 M. and S. 37.

(*l*) Shubrick *v.* Salmond, 3 Burr. 1637. and Ritchie *v.* Atkinson, *ante*, and 10 East. p. 53.

(*m*) Barker *v.* Hodgson, 3 M. and S. 267.

(*n*) 2 Vernon 212. and Blight *v.* Page, 3 B. and P. 295. See *post.*

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So, likewise, a contract for the carriage of goods is not dissolved by an embargo suspending its performance, but must be carried into execution on the removal of the embargo. (*o*) But where a foreign ship is chartered in England by a British subject, with the usual exception, *against restraint of princes*, and performance of the voyage is prevented by an embargo laid by the British government on ships of that nation, a British subject is discharged from his contract. (*p*)

In all cases, indeed, where a contract is unlawful, or becomes so, after it is made; or where, by performing it, a man would derogate from the public duty which he owes to his country; under such circumstances the non-performance of it is matter of peremptory obligation, and therefore an excuse in law. But the mere apprehension of a hostile embargo, founded on a general rumour, though, in fact, an embargo was laid on six weeks afterwards, will not justify a breach of contract. (*q*)

Upon the principle before laid down, no action will lie on a contract made with reference to an illegal voyage; thus, to carry goods securely, shipped without the licence of the South Sea Company, to a place within the limits of their exclusive trade; for the illegality of the *principal* contract destroys all derivative rights by virtue of it. (*r*)

But though a contract in violation of the law may be void; yet it cannot be illegal in the usual sense of that term, if the party be ignorant of the law, and does not contemplate any illegality in *his* share of the contract. It has been holden, in many cases, that it is not sufficient to invalidate a contract for a sale of goods, that the vendor

(*o*) Hadley *v.* Clarke, 8 T. R. 259.

(*p*) Touteng *v.* Hubbard, 3 B. and P. 291. and see this case *post.*

(*q*) Atkinson *v.* Ritchie, 10 East. 530. *ante*, and *post.*

(*r*) Wilkinson *v.* Londonsack, 3 M. and S. 117. and Toulmin *v.* Anderson, 1 Taunt. 227. See likewise Vol. I. p. 100.

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knew they were to be applied to an illegal purpose, unless he have a share in the unlawful transaction. (*s*) By analogy, therefore, to this case, where A. commissioned B. to get a charter-party effected on his ship, Russian built, and British owned, and she was accordingly chartered to go to America, and to take in there a cargo of permitted goods, rice and cotton being specified, and to sail therewith to Cadiz, Lisbon, or Gottenburgh, as directed; but by previous agreement it appeared to have been within the contemplation of the parties to carry the goods to some port in the United Kingdom, and that the ship should carry no licence: the Court held, that this was not an illegal contract, so as to deprive A. of his right to his commission for procuring the charter-party to be effected. (*t*)

Exceptions in the master's covenant to receive a cargo are not to be incorporated, by implication, in that of the freighter to provide one. (*u*) And where a charter-party stipulated for delivery at X., Y., or Z,. &c., but Y. was omitted in the bill of lading, it was held, that such omission only relieved the master from the duty of going to Y., if disinclined, but did not take from him the power. (*x*)

Master, &c. of Trinity-House, *v.* Clark.

It is a general rule, that the *charterer*, not the *chartered party* of a ship, is to be considered as the owner: but there are exceptions to this rule; namely, where by the terms of a charter-party, coupled with the particular nature of the service in which the ship is employed, an intention to vest the temporary property in the chartered party can be inferred. One of the terms in the case of The Master of the Trinity House *v.* Clarke was, that the charter-party

(*s*) Hodgson *v.* Temple, 1 Marsh 5.

(*t*) Haines *v.* Busk, 5 Taunt. 521. See likewise Sewell *v.* R. E. Company, 4 Taunt. 856. Where part of the voyage was illegal, *quære*, whether that part, *antecedent* to the illegal voyage, was not insurable?

(*u*) Sgoerds *v.* Luscombe, 16 East. 201.

(*x*) Shepherd *v.* De Bernales, 13 East. 565.

"granted" the ship, and "let it to hire and freight," which are proper words of lease. The nature of the service was the transport service. Upon a question who was to be considered as the owner, whether charterer or chartered party, the court of K. B. decided, that though the former was in general to be so considered, yet that the particular terms of the charter-party, coupled with a consideration of the peculiar nature of the service contracted for, shewed an intention to transfer the ownership to the chartered party. (*y*)

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When the possession of the ship remains in the charterer, and not in the chartered party.

Upon the same principle, although the proprietor of the ship should furnish the chartered party with a master and crew to navigate the vessel, such a circumstance would not be inconsistent with the possession and temporary property of the vessel being in the chartered party. The court, indeed, in the case above cited, considered such possession of the master and crew as not reserved by the proprietors of the ship to restrain or interfere with the full and free use of the ship by the chartered party, but as subsidiary and subservient to such use. "It is," said Lord Ellenborough, "the same thing as the hire of a waggon and team for a certain time, the proprietor of the waggon stipulating that the waggon should be driven, and the horses taken care of, by his own waggoner and boy, whom he was to feed. In such a case it could hardly be made a question, that the waggon and team were in the possession of the hirer during the harvest, or whatever the term might be for which they were hired."

It must be admitted, however, that the terms made use of in charter-parties, "to charter a ship," are, in their general construction, equivocal. They may either mean a contract in the nature of a demise of the *hull* of the ship, or a mere contract for the conveyance of goods, by which the *space* and *capacity* of the ship are let to the freighter. In the former case, according to the authorities, the

(*y*) Master, &c. of Trinity House, *v.* Clark, 4 M. and S. 288.

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chartered party would have a temporary property, and an entire possession, not controlled by the circumstance that the ship-owner furnished a master and crew to navigate the ship. In the latter case, the charter-party would not differ from a bill of lading of the *whole cargo;* and the possession would remain in the proprietor of the ship, and not in the freighter. Many important points, as to the right of lien for freight, depend upon this distinction, which will be more accurately considered in another chapter.

Saville *v.* Campion.

In a very recent case, it was covenanted by a charter-party, that the owner should receive on board, in London, all such goods as the freighter thought fit to load, and should proceed therewith to Madras. That all the cabins but one, which was reserved for the use of the captain, should be at the disposal of the freighter, who was to appoint a supercargo to superintend the stowage of the goods; but the captain and crew were employed and paid by the ship-owner. The Court of K. B. held, that there being no express words of *demise* of the ship itself in the charter-party, the freighter did not thereby become the owner for the voyage, but that the possession continued in the ship-owner, and that he, therefore, had a lien on the cargo for his freight. (*z*)

It still remains to touch slightly upon a few miscellaneous cases not easily distributable under any particular head. In actions upon charter-parties, the most difficult questions are those which arise upon their construction; not only as respects the covenants, whether they are precedent, subsequent, or independent, but as respects the reciprocal duties of the owner and freighter, and the admeasurement of damages in the event of any breach of contract. In an action to recover damages for not procuring a cargo, (according to the terms of the charter-party,) to consist of various articles chargeable with dif-

(*z*) Saville *v.* Campion, 2 B. and A. 503. and see this case *post.* in the chapter on Freight, compared with other decisions.

ferent rates of freight, it has been decided, that the proper measure of damages was to estimate the freight by means of an average, so as neither to take the greatest possible freight, nor the least. (*a*) And the freighter cannot, in calculating the amount of *dead* freight, insist upon the specific burthen of the ship as stated in the charter-party, unless the misrepresentation had been fraudulent. But where, by a charter-party, a ship was described to be of the burthen of two hundred and sixty-one tons, and the freighter covenanted to load a full and complete cargo; the Court of King's Bench decided, that the loading of goods, equal in number of tons to the tonnage described in the charter-party, was not a performance of the covenant, but that the freighter was bound to put on board as much goods as the ship was capable of carrying with safety. (*b*)

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In the construction of a charter-party, where the instrument proposed in the commencement to contract for the charterer and his partner; but, throughout the remainder of the deed, all the stipulations and obligations were in the name of the freighter; it was decided, that the words in the beginning of the instrument, for himself and partner, ran through the whole, and bound them both equally, since the name of such partner need not have been introduced at all, if it had been intended that the other alone should be responsible. (*c*) But where the master of the plaintiff's ship entered into a charter-party, as agent for the plaintiffs, with the defendant, a partner in the house of M. and Co., for the delivery of goods on a stipulated freight, and the goods were delivered to M. and Co., the consignees in the bill of lading, the Court of K. B. determined that the plaintiffs could not maintain *assumpsit* against the defendant for freight. (*d*)

(*a*) Thomas *v.* Clarke and Another, 2 Star. N. P. 45.

(*b*) Hunter *v.* Fry, 2 B. & A. 421.

(*c*) Thomas *v.* Clarke and Another, 2 Star. N. P. 45.

(*d*) Shack *v.* Anthony, 1 M. and S. 573.

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Where the charter-party first provided for the rate at which freight was to be paid; next, the time when the earning of it was to commence, and the period when it was to end; and then went on to provide for the time when the freight was to become payable, both of what should become due upon the ship's arrival at the destined outward port, and what should subsequently become due after delivery of the cargo; but contained no provision whatever for the payment of any freight, until such arrival; the Court of K. B., in construing it, held, that these provisions constituted but one entire continued covenant, qualified as to the mode of payment, the payment of any freight being made to depend upon the arrival at the outward port, and not at all events. The loss having happened before that arrival, no provision was made by the covenant for the payment of any freight; and as the charter-party did not appear to have defectively stated the intent of the parties, the Court would only look at the terms in which the contract itself was expressed. (*c*)

As an obligation by deed cannot be dissolved but by deed; so, where the plaintiff covenanted, by a charter-party, to unload the cargo at the port of London, a mere parol substitution of the port of Liverpool, instead of London, was held not to confine the effect of the deed. (*d*)

Relaxation from the strict terms of the charter-party for an obvious common benefit.

Puller *v.* Stainforth.

Under the principles, of giving charter-parties a liberal interpretation, the courts have occasionally relaxed from demanding the strict execution of the letter of the deed, even as respects the voyage, where the deviation has been of a kind in which the consent of the freighter might reasonably be implied. And, therefore, in Puller *v.* Stainforth, (*e*) where it was covenanted in the charter-

(*c*) Gibbon *v.* Mendez, 2 B. and A. 17. And see Smith *v.* Wilson, 8 East. 437. Mackrell *v.* Symond, Abbott. 345. And Byrne *v.* Pattinson, *ibid.* 347.

(*d*) Thomson *v.* Brown, 1 Moore 358. This case appears to overrule Hotham *v.* E. I. Company, 1 Dougl. 272.

(*e*) 11 East. 232.

party that the master should remain forty days at Petersburgh to dispose of the cargo, and if he should not succeed in that time, that he *might* then bring it back to England; but intead of which the master, not having succeeded in disposing of it in the forty days, proceeded to Stockholm, and there sold the cargo with the best intentions, and took in other goods for freight, with which he returned to London; it was decided by the Court of King's Bench that he had committed no deviation within the substantial meaning of the charter-party, and, therefore, was entitled to his freight under the deed, after carrying to the account of the merchant the freight earned in bringing the goods from Stockholm. In Bell *v.* Puller (*f*) the Court of Common Pleas pronounced another decision upon the same principle. The circumstances of this case were, indeed, almost exactly similar with the preceding. It was covenanted in the charter-party, that the merchant should remain forty days at Petersburgh to dispose of a part-cargo of lead; and, if he should not be able to effect it in that time, he should bring it back to England. Upon bringing it back, the merchants were to pay him 2,700*l.*; but if the voyage succeeded, they were to pay 4000*l.* Having waited the stipulated time without effecting the sale, and thinking that he might find an advantageous market at Stockholm, or at least by taking in a homeward cargo there might save the merchant from a total loss of the freight of the lead, the master, instead of immediately returning to England, sailed for Stockholm, and there took in a homeward cargo of hemp, with which and the lead, he then returned to England. The clear profit of bringing this cargo was about 2,400*l.*; the sums payable under the charter-party, as before said, if the voyage had been successful, would have been about 4000*l.*; the master offered to settle the account with the merchant by charging him with what would have been due if he had loaded the ship homeward, and allowing him the benefit of the clear earnings that had been made; thus demanding from him

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Bell *v.* Puller.

(*f*) 2 Taunt. 285.

Construction of charter-parties.

about 1,600*l.* But *this he refused;* and insisted that the earnings should go in diminution of the 2,700*l.*, &c. and that the master was, therefore, entitled only to about 600*l.* Upon this the master brought an action in the Court of Common Pleas, upon the charter-party, for the non-payment of the 2,700*l.* with the per centage and gratuity. At the trial the Jury gave a verdict for those sums. An application was made to the court to reduce the verdict to the sum that had been previously offered by the merchant; but, after argument, the verdict was allowed to stand. (*g*)

The principle of the decision in this case appears to be, that the parties themselves, in their charter-party, had fixed the sum to be paid for the failure of their voyage; and that the voyage having failed, but the master having performed his full duty, he was entitled, as a matter of course, to this sum. That, as far as respected the return cargo, he was bound, indeed, to bring back the lead: but as a greater part of his ship was unoccupied, and as the occupation of it with a cargo for himself did not interfere with any possible interest of the merchant, whose business was in fact concluded, there could be no objection to his taking in such a portion of the homeward cargo on his own account. Mansfield, C. J., indeed, said, that he considered it as a mere contract to take certain goods to Russia, upon sale or return; and that he could see no reason why, in the return voyage, the captain might not earn what else he could, by taking other goods on board for his own benefit. "In common cases of charter-party," said his Lordship, "there usually is a covenant that the freighter will supply a certain quantity of homeward freight at the foreign port; and if he does not, the plaintiff has his action on the covenant against him. But suppose, instead of leaving the damages open, he stipulates, If I cannot provide a cargo for you, I will pay you so much, would not the owner, in that case, have a right to

ell *v.* Puller.

(*g*) *Vide* Abbot, 211.

take goods on board for his own account? His ship is at full liberty for him to make any other profit of; and in such a case he doubtless would insist on more or less liquidated damages, according to the chance he foresaw of getting freight home from the place where he was going; he would raise or lower his demand accordingly; and in such case I see no reason why the person who had stipulated to pay such liquidated damages, should be discharged from any part thereof on account of the profit which the plaintiff might make by the cargo supplied by any other person."

Construction of the charter-parties of the East India Company.

The charter-parties of the great public companies, and more particularly those of the East India Company, are usually conceived in more rigorous terms than those between private merchants and ship-owners; the value of the cargo being so much greater, and the Company itself having less opportunity of personal supervision. Accordingly, in the interpretation of these charter-parties, there is a wider scope for the indulgent consideration of the courts of law; and they will exercise the indulgence within those limits, which will preserve the existence of, and give effect to, a liberal and equitable intention upon the part of the Company, but without, on the other hand, departing too widely from the specific stipulations of the parties.

Hotham *v.* E. I. Company.

The Court of King's Bench proceeded upon this principle in the case of Hotham *v.* The East India Company. (*f*) In this case the charter-party contained the usual clause of the East India Company's charters, that the Company should not be liable to pay any freight or demurrage, unless the ship arrived in safety in the river Thames, and there made a right delivery of the whole and entire cargo. Another clause in the same charter-party provided, that if any of the homeward goods, when delivered, should be wet or *damaged*, the ship-owners should take them at the

(*f*) Douglas, 277.

Construction of charter-parties of the E. I. Company.

invoice price. But by a third clause they were not to be charged with any damage, except such as should appear to be *sea-damage.* The ship, in her return home, met with a storm, and was stranded, whereby part of her cargo, consisting of salt-petre, was lost, and the principal part of what remained was damaged; but that was got out of the ship and sent to London, where the vessel was afterwards brought, with a small part of the cargo still remaining on board. The defendants contended, that if they were liable to freight at all under these circumstances, they were, by the above clauses in the charter-party, entitled to a deduction in respect of the goods lost, as well as those which were damaged, and the expences of bringing home the latter, and rendering them marketable. These points came on to be tried on different feigned issues; and the jury found that the plaintiffs were not liable to pay for the goods lost or damaged; but that they were liable to the defendants for their proportion of saving the goods, by way of general average, as well as the expence of bringing them to London. And the Court of King's Bench, upon argument, held this verdict right upon all the issues. Lord Mansfield, in delivering his judgment in this case, observed, that the charter-party was a contract of affreightment; and it was not in contemplation of the parties that it should operate as an insurance against the perils of the sea. The Company, he said, stood their own insurers. The fair construction of the contract, therefore, was, that the ship-owners should be answerable for damage occasioned by their own fault, or that of their servants; as, from defects in the ship, or improper stowage, such as mixing commodities together which might damage one another. If they were liable for damages occasioned by storms, they would be insurers, not freighters. As to the distinction between the goods lost and damaged, his Lordship said, that the clause respecting ship damage extended to all the former clauses of the charter-party, the whole of which was one entire contract, and must be understood in a manner consistent

with itself. It never could be intended that the owners should be protected from the less loss, but remain answerable for the greater.

Construction of charter-parties of the E. I. Company.

It is, of course, in the power of the parties to make their contract in such terms that a charter-party may operate as a contract of insurance, as well as of affreightment; but as a stipulation of this kind is both contrary to the general nature of the deed itself, and is against fairness and reason, the Courts will endeavour to elude this construction, by presuming that neither party intended such a condition, and by helping such a presumption from the context of the deed.

Passage money payable by the East India Company, though the ship be lost.

Amongst other clauses in the charter-party by the East India Company, there is usually one by which the Company agree to pay to the owners in England 14*l.* for each passenger *ordered on board* the ship by any of their agents, from any of their settlements. In Moffat *v.* The East India Company, (*g*) it was decided by the Court that this sum was payable for each passenger *ordered on board* the ship in India by the Company's agents, notwithstanding the loss of the ship before her arrival in the river Thames.

The principle of this decision was, that an extra expence was incurred by the owners laying in a stock, for the necessary subsistence of the persons ordered on board by the Company's agents, which expence is incurred whether the ship arrive or not. Nor is such charge repelled by the stipulation in the charter-party, that "if the ship do not arrive in safety in the Thames, the Company shall not be liable for freight and demurrage, or for any demands in respect of the ship's earnings in freight voyages for the company, or on account of any other employment;" for construing the latter words according to the context, they mean the employment of the ship in any other voyage or

(*g*) 10 East. 468. Vide likewise Hume *v.* E. I. Company, 1 Black. 291.

Construction of charter-parties of the E. I. Company.

adventure; and in no degree apply to the putting of the passengers on board.

Another question arose upon the charter-party in the same case. It was one of the conditions of this deed that the company should allow the master 200*l.* for every calendar month he remained in India for the current expences of the ship; such payment from the first port of delivery in India, and to continue until the ship should be discharged from her last port in India, or China, to return to Europe. In the case in question the ship was ordered from England to Madras, from Madras to Canton, and from Canton with her lading to England. In the course of her voyage to England she encountered a storm off the coast of India, and suffered so much damage that she was obliged to put into Bombay to refit. Here she remained for some months, for two of which months she was employed in some short service by the company, and was paid accordingly. The master, upon his return, demanded the 200*l.* monthly money for the whole time he had been at Bombay, and contended that Bombay was his last port of departure under the charter-party. But the Court decided against his claim, and held that the last port under the charter-party was Canton.

Effect of the usual clause in the Company's charters that they may employ the ship in trade or warfare.

It is another usual condition in charter-parties by the East India Company, that the Company's presidents and consuls abroad may employ the ship hired either in trade or warfare. This clause came under the consideration of the Court of King's Bench, in Dobree *v.* The East India Company.(*h*) The Company's presidents abroad having not only employed the plaintiff's ship to form part of a military expedition, but very considerably altered her form and appointments, in order to adapt her to the carriage of guns, the plaintiff insisted that they exceeded their power under the above clause in the charter-parties. But the

(*h*) Dobree *v.* E. I. Company, 13 East. 290.

Construction of charter-parties.

Court decided that they had not exceeded it, and had only to restore the ship to its original state, and that the owner was not entitled to a greater sum than under the charter-party.

Another principle to which the Court will resort in the interpretation of charter-parties, and by which it will occasionally limit the capacity of the strict letter, is the usage of trade; for as the parties are necessarily supposed to be acquainted with the usage and customs of merchants in their own particular trade, it is a natural inference that such usages made a part of the general and understood circumstances under which they contracted, and that they are only omitted because supposed to be matter of concession upon both sides. Lord Kenyon, and after him Lord Ellenborough, frequently acted upon this principle, requiring only that the usage should be good, reasonable, and general; in a word, the *law merchant*, and not a bye-law, resolution, or agreement, of any mere body, or club of mercantile men. But it would seem that such usage will be sufficient, if it be universal amongst the company or association to which the two parties to the action, the plaintiff and defendant, belong. And, therefore, in Donaldson *v.* Forster, (*i*) where it was the stipulation of the charter-party that the merchant should have the exclusive use of the cabin, and where the master alleged a usage that, in charter-parties so expressed, the master was still allowed to take out a few articles of private trade; Lord Kenyon allowed the usage to be given in evidence in diminution of the strict obligation of the charter-party.

But though the Courts, as before said, will assist the equity of cases, and will give effect to the presumed intention of the parties, by construing the particular stipulations by reference to the context, and by selecting of two meanings that which is most fair and equitable, it is necessary to repeat that they will not make new contracts

(*i*) Abbot. 222.

Construction of charter-parties.

Blight v. Page.

for the parties, nor set aside positive and specific engagements, which, however hard, admit only of one interpretation. And, therefore, in Blight *v.* Page, (*k*) before cited, the Court of King's Bench required the execution of the positive contract, or satisfaction for the non-performance, though the party had bound himself to what he could not perform.

This was an action upon a memorandum for charter, by which it was stipulated on the part of the owners, that the ship should sail to Liebau, and there load, from the factors of the defendant, a full cargo of barley, and proceed therewith to Berwick, and deliver the same on being paid freight at the rate of 8*s.* 6*d.* *per* quarter, with two-thirds port charges and pilotage, (restraints of princes and rulers excepted,) one half of the freight to be paid on the right delivery of the cargo, and the remainder in two months following; and the ship was to be allowed to remain on demurrage ten days over and above her running, or lay days, at 3*l.* *per diem.* On her arrival in Liebau Roads, the captain was informed by the factors of the defendant, that the Russian government had prohibited the exportation of barley, and that it was, therefore, out of their power to furnish the intended cargo. The captain, however, entered the port; and, after continuing there forty-nine days, returned in ballast to Berwick. The action was brought to recover 459*l.* for freight, 27*l.* 18*s.* for charges, and 30*l.* for ten days' demurrage. It was argued, for the defendant, that the exceptions of the restraints of princes and rulers was applicable both to owners and shippers; but Lord Kenyon, C. J., decided against the defendant on this point, upon the above general principle of law; and, therefore, held that the plaintiff was entitled to recover the freight and charges; but with respect to the demurrage, he held, that as it appeared that notice was given before the captain entered the port, that the factor could not furnish a cargo, there was no pretence for making the plaintiff liable to that charge.

(*k*) 3 B. and P. 295. and see *ante*, p. 21.

CHAPTER II.

BILLS OF LADING.

The nature of a bill of lading.

WE have before had occasion to observe upon the exact analogy between the ship-owner, as a carrier by sea, and the common carrier by land; and to add, that from this consideration of their common nature, the law, when not qualified by the contract of the parties, imposes upon both relations the same duties and the same risks and liabilities. Their forms of business and dealing have likewise the same general resemblance. Thus the bill of lading of the ship-owner, (or his master,) is nothing more than his formal receipt as a carrier, by which he acknowledges that he has received certain goods on board his ship, and obliges himself to deliver them to the consignee or his assigns, "in like good order and condition as he received them, *the act of God, the king's enemies, fire, and all and every other dangers and accidents of the seas, rivers, and navigation, of whatsoever nature and kinds, excepted.*" It may be unnecessary to observe, that the common law liability of a land carrier comprehends all accidents and losses whatever, whether by negligence or mere contingency; the act of God and the king's enemies only excepted; and that under this liability the carrier is answerable for loss by fire. From the exact analogy of the two characters of the ship-owner and the land-carrier, the common law would doubtless give the same extent to the liability of the ship-master, unless it were limited by this express precautionary restriction in the bill of lading.

Bills of lading usually given by the master, after goods shipped under charter-parties.

Where a vessel is hired by charter-party the merchant is usually the hirer of the whole of such ship; and the charter-party, as observed in the preceding chapter, is the deed and contract under which she is let. When the goods are shipped in pursuance of this contract, the master

delivers to the merchant bills of lading; the charter-party being the agreement to carry and convey, and the bill of lading being the evidence of the shipping of the particular merchandise to be conveyed in pursuance of the contract. But the bills of lading, which are more specifically such, and of which we are treating in the present Chapter, are those which are usually given by the master or owner of a ship employed as a *general* carrier, and, in that character, receiving the property of various merchants, unconnected with each other, and engaging to convey their respective goods to the place of the ship's destination. Upon receiving such goods, the master, in the first instance, merely gives a written acknowledgment of having received them on board, and immediately afterwards signs two, or sometimes three, of the more formal acknowledgment and obligation, termed a bill of lading; one of which bills of lading is kept by the merchant for himself; a second transmitted to his consignee, factor, or agent abroad, by the post or packet; and the third usually sent to the same person by the master of the ship, together with the goods. The substance of this bill of lading, as above mentioned, is the formal acknowledgment of having received the goods on board; and the engagement to deliver them to the consignee or his assigns, he or they paying the freight agreed, with the customary primage and average. Such bill of lading, therefore, may be considered as containing three specific stipulations. The first, that he, the master, will deliver the goods in like good order and condition in which he received them to the consignee or his assigns. But, secondly, that he expressly excepts himself from any liability for loss, damage, or accident, arising from the act of God, the king's enemies, fire, and all and every other dangers and accidents of the seas, rivers, and navigation, of whatever nature and kind soever. And, thirdly, that he shall be paid the freight agreed upon "before delivery," with the accustomed primage and average. (*a*) When the ship is home-

(*a*) For the present form of a bill of lading, see Appendix.

ward bound from the West India Islands, which send their boats to fetch their cargo from the shore, there is introdnced a saving out of this exception "*of risk of boats so far as ships are liable thereto.*" And in that case, the whole clause of the exception is as follows:—"*The act of God, the king's enemies, fire, and all and every other dangers and accidents of the seas, rivers, and navigation, of whatever nature and kind soever, save risk of boats, so far as ships are liable thereto excepted.*"

Exceptions in bills of lading in the West India trade.

A ship employed in the general carrying trade is termed a *general* ship, a name applying to distinguish it from vessels taken up upon charter-parties

When it is intended to employ a ship in this general carrying trade, it is usual to give notice of such intention by advertisement of printed papers or cards, mentioning the name and destination of the ship, her burthen, and (if during a period of war,) whether she is to sail with any and what convoy, and other matters relating to the voyage. This advertisement is understood by merchants as a special engagement, assurance, or warranty, to the shippers; and accordingly becomes a part of the contract, although not afterwards repeated in the bill of lading. Hence, if a general ship have been thus advertised for a particular voyage, and her destination be afterwards altered, the owner is bound to give specific notice of the alteration to every person who ships goods on board. Accordingly, in Peel *v.* Price, (*b*) a ship-owner was held liable for special damage to a merchant, whose goods he had received under the notice of one voyage, and had afterwards changed the destination of the ship, and performed his voyage by a circuitous course, without any notice of the change. The action was in the form of a special action on the case for deceitfully representing that the defendant's ship would sail from the port of London to Messina and Naples, and then altering her destination to Naples and Messina,

The owner of a general ship is bound by the notices or advertisements issued by him respecting the ship's voyage, &c.

(*b*) 4 Campb. 243.

whereby the plaintiff, who had shipped goods on board her for Messina, and effected policies of insurance to cover that risk, was afterwards forced to effect other policies at a higher premium, giving the ship leave to sail to Naples before going to Messina. The defendant had printed and circulated a card, stating that this ship was to proceed to "Messina and Naples." One of these cards had been received by the plaintiff, but at what time did not appear. No freight offering, the defendant, about the month of April, altered the destination of the ship in this amongst other respects, that she was to sail to "Naples and Messina." A fresh card was printed and placed in the defendant's counting-house. But there was no evidence that the plaintiff saw it; nor was it delivered to him. The ship sailed to Naples in the first instance, and the plaintiff effected policies in the manner stated in the declaration. It was proved to be customary to alter the destination of ships when freight cannot be procured for them. Under these circumstances it was contended for the defendant that the plaintiff was bound to have made specific inquiries as to the destination of the ship, before he put his goods on board; in which case he would have learned that it had been altered. His loss arose from his own negligence. But Gibbs, C. J. held, that where a card has been published, advertising a ship for a specific voyage, if that voyage was altered, the owner was bound to give specific notice of the alteration, to all persons who afterwards should ship goods on board the vessel, and that he was otherwise answerable for the loss which they might sustain by supposing that the destination of the vessel remained unaltered.

Discharge of one bill of lading discharge of all.

It has been said above, that it is the custom amongst merchants to have three copies of the bills of lading; one for the merchant at home, one for the consignee abroad, and one for the direction of the master on board the ship. Each of these ordinarily contains a clause, stating that the master of the ship "hath affirmed to three

bills of lading, of this tenor and date; one of which bills being accomplished, the other two to stand void." Accordingly, the fulfilment of one bill of lading vacates all, and no inconvenience can arise in practice from the multiplication of the copies. Although each part or copy of a bill of lading is of itself a separate and complete contract, as to the holder of that particular part; yet all the parts or copies make but one contract as to the master; therefore, if one be performed, all are so.

Transfer of the bill of lading, and effects of it.

A bill of lading, in the usual form, stipulates to deliver the cargo to "A. B., merchant, or to his *assigns*." Under this stipulation, and, indeed, according to their general nature as explained by the usage of merchants, bills of lading are transferable by indorsement, and in practice are daily so transferred. This power of transferring bills of lading, though necessary for mercantile purposes, and, therefore, in their general effects, affording facilities to trade, is sometimes productive of cases of great fraud and hardship, but to which neither law nor equity can afford any adequate remedy; unless they should interpose at the expence of greater evils than they propose to remedy. Bills of lading are indorsed either in blank, that is, not defining the consignee; or to a person specially appointed to receive the goods; but whether the indorsement be general or special, makes no difference whatever.

Effects of the transfer or indorsement of the bill of lading.

When goods are shipped to be carried abroad by a merchant resident in this country, or are sent from one port of the kingdom to another, the persons to whom they are sent must necessarily be in one of three relations to the merchant by whom they are transmitted; they may be buyers; they may be his correspondents or consignees, with mutual dealings; or they may be merely his factors, agents, or brokers; and, in the latter character, having given no value for the cargo, are only his agents for the sale of it. But, under all these cases, a *bonâ fide* holder of a bill of lading, derived from the indorsement of *any*

of them, is entitled to the cargo, and may claim it from the master, if he can prove that he has purchased it for a good consideration. If a factor, or other agent, indorse the bill, *on his own account*, with notice *of his being only a factor* to a third person, such third person is then only a sub-agent of the factor, and has no larger property or rights than the factor himself. But if the consignee, though a mere factor, make an absolute sale of the goods whilst at sea, and where no other delivery can be given than by the indorsement of the bill of lading, such sale will be good upon the mercantile principle of the transferable nature of bills of lading; and the *bonâ fide* vendee is entitled to hold the goods by virtue of the bill of lading, though no actual possession be delivered, and though the factor may afterwards have embezzled the amount, or may have acted fraudulently, or in contravention of some covenants by himself with the consignor. Thus, in Davis *v.* Reynolds, (*c*) it was held, that the property of a cargo was so completely divested from the consignor, by a transfer by the consignee before the arrival of the vessel, that the consignor lost his equitable right of stopping *in transitu*, though the consignee became bankrupt before the arrival of the ship. This case, indeed, is stronger and more important, inasmuch as the buyer could not produce the bill of lading in evidence, the parties having neglected to stamp it. The consignee, in this case, was the purchaser of the cargo from the merchant by whom it was shipped. It consisted of some flax; and was first purchased, by the firm of Cooper and Co., merchants in London, from Peacock and Co., at Hull, payable by bill at two months. It was accordingly shipped for the port of London, and the bill was accepted. Before the arrival of the ship in the river it was resold by Cooper and Co. to the plaintiff, who immediately paid them for it in cash, and took a receipt from them, specifying the terms of the

Davis *v.* Reynolds.

(*c*) 4 Campb. 267. But see *post.* Lickbarrow *v.* Mason, 2 T. R. 63. and 5 T. R. 683. Cumming *v.* Brown, 9 East. 506. Hunt *v.* Ward, 3 T. R. 467.

bargain. A few days afterwards it arrived, and was landed at the defendant's wharf. By this time Cooper and Co. had become insolvent; and the flax being demanded by Peacock and Co., it was delivered to them upon an indemnity. Under these circumstances Reynolds brought his action. The only difficulty in the case was, that though Cooper and Co. were in possession of a bill of lading, and had sold the cargo to Reynolds by means of it, it could not be produced in evidence, not being stamped. In the absence, therefore, of this document, it was contended, that there were neither the means of transfer, nor the evidence of it; that all the decisions upon this subject had proceeded on the ground that the possession of the bill of lading was symbolically the possession of the goods; but without it the property could not vest in the consignee, and he could not transfer it to another. But Lord Ellenborough held, that Cooper and Co. had become the purchasers of the flax, and had completed their title to it by accepting the bills of exchange. The property, therefore, had vested in them, and they had not exceeded their right in disposing of it. Peacock and Co., the consignors, after having received the bill of exchange, were in the situation of paid vendors. Therefore, when the flax was deposited at the wharf, his Lordship said he was of opinion it was received by the defendant, (the wharfinger) on account of the plaintiff, and ought to have been delivered up to him.

But a transfer of a bill of lading is not absolute, where the first purchaser himself received it on a condition; such condition being expressed therein.

But if the consignee, or first buyer of the cargo, shall have himself received the bill of lading upon some condition, and such condition be expressed in the bill of lading, so that the bill carries a notice of this qualification upon the face of itself, when produced in the market, a second purchaser from such buyer cannot derive a greater right than the first buyer himself possessed, as he buys with full notice of the condition and limitation. Barrow *v.* Coles (*d*) was decided upon this principle. The house of Norton and Fitzgerald, at Demarara, had drawn a

(*d*) 3 Campb, 92.

Of conditions in bills of lading.

bill of exchange upon Voss, in London, payable to their own order, and indorsed it to the plaintiff, at the same time annexing to it a bill of lading of the cargo of coffee, with an indorsement upon it, making them deliverable to Voss, if he should accept and pay the draft; if not, to the holder of the said draft. The bill of exchange, and bill of lading, being sent to Voss, he accepted the former, and detached the latter from it. He then indorsed the bill of lading for a valuable consideration to the defendant, but he did not pay the bill of exchange. But Lord Ellenborough held, that the special indorsement on the bill of lading ought to have made the defendant inquire whether the condition on which the coffee was delivered to Voss had been fulfilled; and that, after the dishonour of the bill of exchange, the property in the coffee vested in the plaintiff, who had a verdict accordingly.

The extent and effect of the right of stopping *in transitu* by an unpaid consignor belongs to another part of this work. It will, therefore, be sufficient to observe in this place, that where the consignee is in the relation of an actual buyer to the consignor, there the property vests in the consignee immediately upon its being delivered on board of ship, or to an agent of the consignee in this country. (*e*) In this case the master, or ship-owner, is the mere carrier of the goods for such purchaser. It is true, indeed, as will more fully appear in the chapter on stoppage *in transitu*, that such goods are under certain circumstances liable to be arrested by the consignor; the right of stoppage *in transitu* being one of those equitable rights, to assist which the law relaxes very considerably from its more formal and rigid rules; and, under this principle, requires a more complete delivery to defeat the right of the consignor, in this respect, than is sufficient in all other cases to vest the possession and property. (*f*)

(*e*) Dixon *v.* Baldwin, 5 East, 175.

(*f*) Delivery to the consignee's agent defeats this right, *ibid.* 175.

As the equitable right of a creditor, or of a correspondent with mutual dealings, is effectually as good as that of a buyer for value from the consignor, the law regards this relation with the same favour as the former; and, under this principle, admits the property to be vested, or rather to be removed out of the hands of the consignor, by a less perfect delivery than is required between principal and factor. The general rule, under these circumstances, is, that the indorsement and delivery of a bill of lading to a creditor conveys the whole property in the goods from the time of its delivery. Vertue *v.* Jewell (*g*) is a recent decision under this principle; and indeed deserves a more than cursory consideration, as incidentally involving the general effect of the indorsement of bills of lading with or without notice. It was an action of trover by the indorsee of a bill of lading against a master of a ship refusing to deliver the cargo assigned under it. A merchant at Yarmouth, of the name of Bloom, had shipped a cargo of barley on board the sloop Adolphus, of which Jewell, the defendant in the action, was master. The bill of lading made the barley deliverable in the port of London to the order of the shipper; and was indorsed by him to Burrows and Winn, corn-factors and corn-merchants in the city. They received the bill of lading on the 4th of December. In the month of October preceding, J. W. Ayres, for their accommodation, had accepted a bill for 350*l.* which was about to become due; and they were further indebted to him in a large amount. It was fully within the knowledge of Ayres that they had become much embarrassed in their affairs, and were unable to provide for the bill of exchange. They, therefore, for the purpose of covering him, proposed, of their own accord, to indorse the bill of lading of the barley. They executed this purpose, accordingly, on the 6th of December, and made out a regular sale note to him. On the same date they stopped payment. Ayres immediately after indorsed the bill of lading, and made

Effect of the indorsement of bill of lading to a creditor, or correspondent with mutual dealing.

Vertue *v.* Jewell.

(*g*) 4 Campb. 31.

Of the indorsement of a bill of lading to a creditor, &c.

out a similar sale note to the plaintiffs. The bill of exchange for 350*l.*, which Burrows and Winn had negotiated, he paid regularly when it became due. The Dolphin arrived in the river Thames on the 17th of December; and the barley being then demanded by the plaintiffs, Jewell, the master of the ship, and the defendant, refused to deliver it, having had an indemnity from Bloom, the consignor. At the time it was shipped, and from thence till the indorsement of the bill of lading by Burrows and Winn, Bloom was indebted to Burrows and Winn, upon the balance of accounts, including bills of exchange then running, which they accepted of him to the amount of 590*l.*, being considerably more than the value of the barley; and it was on account of this balance that the barley was consigned to them. The bills so accepted were never paid by Burrows and Winn, who became bankrupts in the end of December, and were then indebted to Bloom above 2000*l.* Lord Ellenborough ruled, that under these circumstances Bloom had no right to stop *in transitu.* The barley being consigned to Burrows and Winn on account of the balance which then existed in their favour, the property vested in them absolutely. If there had not been this mutual account between the consignor and consignee, the transfer of the bill of lading from Burrows and Winn to Ayres being with notice, would not have defeated the right of the consignor to stop the cargo before actual delivery. If a consignee, said his Lordship, indorse a bill of lading for a valuable consideration to a *bonâ fide* purchaser, without notice, the right to stop the delivery of the cargo is gone as against the indorsee, although it would have remained in force as against the consignee, had the bill of lading not been indorsed. But Ayres here had notice of the insolvency of Burrows and Winn; and, if against them there existed any right to stop the cargo, he could not claim the barley. The circumstance, however, of Bloom being indebted to them on the balance of accounts, divested him of all control over the barley from the moment of the shipment. His Lordship added, that the dishonour of the

bills of exchange made no part of the case, the rights of the parties depending only upon the state of things, when the bill of lading had been signed and indorsed.

Effect of indorsement or transfer by the factor or consignee without value.

The law regards the transfer, or indorsement of a bill of lading by a factor, or mere agent of the consignor, with less indulgence; and for the purpose of preventing the frauds too frequently committed by the abuse of the large power of these agents over the cargo, the Courts of law confine them as strictly as possible within their understood commission to dispose of the cargo. But they are still the servants and trusted agents of their principal; and upon all mercantile principles their acts, within their implied commission, must bind their consignors; and any sale by them, being a sale by those commissioned to sell, must be absolute. Hence, an indorsement of a bill of lading by a factor for a *bonâ fide* consideration is a conclusive sale against his principal. But a factor cannot *pledge* the goods of his principal by indorsement and delivery of the bill of lading, any more than by the delivery of the goods themselves; though the indorsee has dealt *bonâ fide*, and did not know that he was a factor. An important decision under this head occurred in the case of Newsom and Thornton.(*h*) In trover for a quantity of beef, it appeared that the plaintiffs in the action, who were Irish merchants, in December, 1802, shipped the beef in question on their own account, consigned to Church as their factor, for sale; and the bill of lading, which was to deliver to order or assigns, being indorsed by one of the plaintiffs, was transmitted to Church. Soon after the arrival of the bill of lading it was indorsed by Church; and deposited by him with the defendants as a security for 200*l*. advanced by them to him, it not appearing that they knew the beef had been consigned to him as factor. He stopped payment in June; and was afterwards declared bankrupt, not having paid for the beef, which the defendants

A factor cannot alienate the goods of his principal by a *pledge* of the bill of lading.

(*h*) Newsom *v.* Thornton, 6 East. 17.

Newsom *v.* Thornton.

got possession of, and refused to return, though the freight and other charges were offered. The usual credit was three months; therefore, the bill of lading (which was within that date) conveyed to persons conversant in the trade, as the defendants were, an intimation that the goods were probably not paid for; though that circumstance does not appear to have had much weight in the decision, which proceeded on the general ground, that a factor cannot pledge the goods or effects of his principal. Lord Ellenborough, in his direction to the jury, stated, that the beef having been consigned to Church as a factor, gave him no authority to pledge the goods, but only to sell them for his principal; and, therefore, he had no authority to pledge the bill of lading, which was the mere symbol of the goods. Upon the ground of the good faith of the indorsee, and his total ignorance of the character of the indorser as a factor, a motion was afterwards made to set aside the verdict which had been obtained for the plaintiffs; upon which occasion his Lordship said that it was a direct *pledge* of the bill of lading, and not intended by the parties as a *sale*. He added, that a bill of lading would, indeed, pass the property upon a *bonâ fide* indorsement and delivery, where it was intended so to operate, in the same manner as a direct delivery of the goods themselves would do, if so intended; but it cannot operate further. That if the factor had been in possession of the goods themselves, and had proposed to *sell* them to the defendants *bonâ fide*, the property would have passed by the delivery; but not if he had only meant to *pledge* them, because it was beyond the scope of a factor's authority to *pledge* the goods of his principal. The symbol, therefore, said his Lordship, shall not have a greater operation to enable him to defraud his principal, than the actual possession of that which it represents. The principal who trusts his factor with the power to *sell* absolutely, shall so far be bound by his act; but the defendants shall not extend the factor's act beyond what was intended at the time; and here only a pledge was intended, which he had no authority to make. "I consider," said

his Lordship, "the indorsement of a bill of lading, apart from all fraud, as giving the indorsee an irrevocable uncountermandable right, to receive the goods; that is, where it is meant to be dealt with as an assignment of the property in the goods, but not where it is only meant as a deposit by one who has no authority to pledge them; and having been dealt with in this case only as a deposit, it could not be made into a sale in order to give it effect." Newsom *v.* Thornton.

So, likewise, in a subsequent case, (*i*) the Court of K. B. decided, that where a broker pledged the goods of his principal, the pawnee, though he had given a valuable consideration, could not detain them against the original owner. For although the broker had a lien on the goods for the balance due from the principal to him at the time of such pledge, the lien was personal, and not transferable by such tortious act of the broker. And in Martini *v.* Coles, (*k*) which is a very recent case, the Court repeated the same doctrine; and decided that a factor could in *no case* pledge the goods of his principal, unless he has a special authority, or where the principal has held him forth as the owner, in which case the factor would have the same rights. Therefore, where goods were consigned from abroad to a factor, to be sold on account of the consignor, and a bill of lading was sent to deliver the goods to the factor or his assigns, and the factor afterwards indorsed and delivered the bill of lading, together with the goods, to the defendants, as brokers, with instructions to do the needful, and the defendants made advances to him on the credit of those and other goods, without knowing that he was not the owner of them: the Court held, that

M'Combie *v.* Davies.

Martini *v.* Coles.

(*i*) M'Combie *v.* Davies, 7 East. 5. If a factor pledge the goods of his principal, the latter may recover the value of them in trover against a pawnee, on tendering to the factor what is due to him, without any tender to the pawnee. Daubigny *v.* Duval, 5 T. R. 604. Patterson *v.* Tash, Str. 1178.

(*k*) 1 Maule and Selw. 140. and Jackson *v.* Anderson, 4 Taunt. 24. See the cases referred to in the argument and judgment.

Semble, cases may exist to warrant a factor in pledging the goods of his principal.

the defendants could not retain the goods against the consignor, until payment of the debt due to them from the factor on account of these advances. In this case Lord Ellenborough observed, that it was much to be regretted that a bill of lading, instead of being launched into the world as an instrument of equivocal import, should not have designated on the face of it in what character the consignment is made, where it is intended that the consignee should fill that of factor *only*. And Bayley, J. observes, that cases may, perhaps, exist where the principal would be bound by the pledge of his factor.

Different effect of bankruptcy on consignments of different characters.

The description of the consignee, namely, whether creditor, purchaser, or factor, has, likewise, another important effect in regulating the character of consignments made by merchants before bankruptcy, but not arriving till afterwards. The general rule of course is, that property does not change in the hands of the carrier; and, therefore, that a consignment, made before bankruptcy, but not arriving till afterwards, remains the property of the consignor; unless, indeed, the delivery be made by the order and upon the account of the consignee, and be a complete alienation from the consignor. In the case of a consignment to a factor, therefore, there can be no difficulty. The property remains the consignor's, and passes into the hands of his assignees. But in the case of a consignment to a creditor or person with mutual dealing there is more doubt. As the equity of such a case is very strong, the Courts of law have always shewn a disposition to favour it, and to consider such an order or consignment in the nature of an executed payment or completed delivery; and, as such not vesting in assignees, though sent before bankruptcy, and not arriving till after.

A case of this kind came before Lord Ellenborough in an action by the assignees of a bankrupt, (*l*) against one

(*l*) Alley and others, assignees of Jameson, a bankrupt, *v.* Hotson, 4 Campb. 325.

Effect of bankruptcy on consignments.

of his creditors, who had received the proceeds of a shipment after bankruptcy, by the effect of an order given long previously. The bankrupt had been captain of a ship in the service of the East India Company. Being about to sail from this country, he left a general power of attorney with the defendant, to whom he was indebted in a considerable sum of money. He carried out with him, as an investment, to Calcutta, some cases of saffron. Not finding a market for them there, he sent them to Bombay, addressed to the house of Forbes and Co. In his letter of advice to that house, dated 8th of January, 1812, he says, " I leave the disposal of the saffron to you; and, when sold, please remit the proceeds to our mutual friend Mr. Hotson, of London, on my account." Forbes and Co. sold the saffron before Jameson's bankruptcy, and remitted the proceeds to the defendant; but he did not receive them till after the bankruptcy. It was contended, for the assignees, that the bankruptcy operated as a revocation of the order of the 8th of January, 1812. The defendant could have no lien, as he had no possession; and the money, before it reached him, had become the property of the plaintiffs. But Lord Ellenborough said, that the defendant had a right to detain the money in satisfaction of the debt due to him from the bankrupt. When the order of the 8th of January, 1812, was given, the bankrupt had a power to give it; and being coupled with an interest, was not countermanded by his subsequent bankruptcy. The transaction was entirely free from fraud. This was a case of mutual credit. If a factor has a lien on goods, he has a right to the price, although received after the bankruptcy. In the same manner, this money was subject to the defendant's claim before it could vest in the assignees. (*m*)

The same point was indeed effectually decided in an earlier case, where money had been borrowed upon a bill of lading before its arrival, and whilst the borrower was solvent, but the bill of lading was not indorsed till after

(*m*) Olive v. Smith, 5 Taunt. 56.

An agreement to assign, made by a consignee, on receiving a letter of advice of a shipment on his account, is an assignment, or at least an equitable lien, effectual against assignees.

bankruptcy. (*n*) The borrower, in this case, had received advice from his correspondent abroad, that a cargo was shipped on his (the borrower's) account, upon which he immediately effected an insurance; and upon the security of this policy, and an agreement to assign the goods and indorse the bill of lading upon its arrival, he procured a considerable loan of money. Upon the arrival of the bill of lading he was a bankrupt; but he indorsed the bill of lading, and the goods were delivered to the lender under it. Under these circumstances the assignees brought an action of trover, alleging, that as the bill of lading had not been indorsed till after an act of bankruptcy, the goods could not have passed by it. At the trial at Nisi Prius the jury found a verdict for the plaintiff, under the direction of Grose, J., who held, that the legal property remained in the bankrupt till the indorsement, and that he could not dispose of it after his bankruptcy in prejudice of his creditors. But a new trial having been granted, this verdict was set aside, on the ground that the agreement and deposit of the policy, &c. gave the defendant an equitable lien upon the property, and the assignees could only claim subject to such lien. In a very elaborate judgment given upon this occasion, Ashhurst (contrary to the spirit of recent decisions) put the whole question upon the ground of this equitable lien, instead of considering it, as it would appear that it ought to have been considered, as a question of delivery. The goods being shipped on account, and notice of such shipment having been sent in a letter of advice, certainly constituted such a delivery as was sufficient to support an assignment by the consignee, and therein to give effect to an agreement to assign. (*o*) But Ashhurst, J., as above said, put the question entirely upon the ground of an equitable lien. He said that, as between a person who has an equitable lien, and a third person who purchases the goods for a valuable consideration, and without notice, the prior equitable lien shall

(*n*) Lempriere *v.* Pasley, 2 T. R. 485.

(*o*) Davis *v.* Reynolds, 4 Campb. 267.

not over-reach the title of the vendee; for the title of him who has both a fair possession and an equitable title shall be preferred to that of a mere equitable interest. But as between the person who has the equitable lien and the assignees, if the lien subsisted before the bankruptcy, they shall never recover or retain the property without discharging the money due. The party who has the equitable lien ought not to be on a footing with the rest of the creditors, for whom the assignees are trustees; for the creditors at large trusted to a personal credit, but he trusted to a pledge. The money lent to the bankrupt would never have become a part of the assets of his estate, had it not been lent upon the credit of the goods pledged; and when the money was taken out of the bankrupt's effects and repaid, they were only just where they would have been if the money had never been advanced. As between the person having the lien and the assignees, they must stand in the place of the bankrupt, and take his property subject to all the equitable liens to which it would have been subject in the hands of the bankrupt himself. By the act of bankruptcy, they only get the legal right. The bankrupt himself had the legal right before the bankruptcy; but he could never have retained the goods against the lien, without paying the money borrowed. So neither could the assignees. Nor if the party obtained the possession, could they get it from him without paying the money advanced; for retaining the property, agreeable to a lawful stipulation between him and the bankrupt previous to the bankruptcy, could never, even in a court of law, be said to be a wrongful conversion. It makes no difference, added he, whether there be an actual assignment of the bill of lading, or only an agreement to assign; as neither conveys more than an equitable title. It might be a great inconvenience to commerce, if it were laid down as law, that a man could never take up money upon the credit of goods consigned, till they actually arrived in port. There seems to be no inconvenience on the other side; nor can it be any inlet

Lempriere *v.* Pasley.

to fraud, for no other person can be induced to lend money on the credit of the cargo, after the party has delivered over all the documents to him who has the first lien.

The property of the goods during the voyage follows the character of the consignee, and not the letter of the bill of lading.

Though bills of lading are, according to the usage of merchants, the ordinary instruments by which cargoes are vested and transferred, and pass by delivery and indorsement, (*p*) the property, as has been stated above, may be transferred without them, the delivery of the cargo in this respect being subject to the same rules with the delivery of other goods; and, therefore, if a cargo be delivered to a ship-owner, like goods to a carrier, to be conveyed on account of, and at the risk of, the consignee, the property of such goods is immediately vested in the consignee by the shipment itself. (*q*) In this case the delivery is complete for all purposes, except against stoppage *in transitu* by the unpaid consignor, upon any breach of conditions by the consignee before the actual arrival. The property, indeed, during the voyage, follows the character of the consignee, and corresponds with the property of goods sent by land-carriers under similar circumstances. If the cargo be sent to a purchaser, the property is vested, as above said, immediately upon the shipment; and the loss during the voyage would, of course, attach to such consignee. If the cargo be sent to a factor for mere purpose of sale, the property, during the voyage, and afterwards, till an actual sale by the factor, remains with the consignor. If the cargo be sent to a creditor or correspondent, with mutual dealing, the property during the voyage will depend upon the mutual understanding under which it was sent, and will remain in the consignor, or pass to the consignee, accordingly as it is sent as a payment, or as a mere consignment for which the consignee is to find a market.

(*p*) Lickbarrow *v.* Mason, 5 T. R. 683; and Hibbert *v.* Carter, 1 T. R. 745.

(*q*) Walley *v.* Montgomery, 3 East, 590.

It has been above said, that three bills of lading are usually made and signed; and there is, therefore, a possibility that there may be conflicting demands upon the captain by the different holders. Nothing, however, is here required of the captain but to act with good faith, and to the best of his judgment, and to make delivery of his cargo to the person who first demands it of him, upon presentment of a bill of lading, and under circumstances which do not justify any suspicion of such person having unfairly procured the possession. If he act differently, he is answerable, according to the circumstances of the case, to the person injured by his negligence, the bill of lading being not only the instructions of the merchant to him, as his carrier or servant, but his own special agreement. (*r*) The case of Coxe *v.* Harden (*s*) was decided upon this principle. In this case, the consignor of goods abroad, upon receipt of orders from a correspondent here, had shipped goods on account and at the risk of the consignee, and had taken bills of lading from the captain, making the goods deliverable to the consignor's own order. Upon the sailing of the ship, he had transmitted one of such bills *unindorsed*, with the invoice to the consignee, inclosed in a letter, informing him that he had drawn upon him for the amount, which he doubted not would meet due honour, and at the same time close the account. At the same time, however, by way of precaution, he sent also another bill of lading, *indorsed*, to his own agent. Under these circumstances it was held, that upon the shipment, *on account and at the risk of the consignee*, the property in the goods had vested in him, subject only to be divested by the consignor's stopping them while *in transitu;* and that the consignee, upon the arrival of the goods, having obtained possession of them from the captain by the production of his *unindorsed* bill of lading, had become their absolute proprietor, however wrongfully parted with by the captain without a competent authority from the shipper,

(*r*) Caldwell *v.* Bell, 1 T. R. 205. (*s*) Coxe *v.* Harden, 4 E. R. 211.

and however the captain might be answerable to the shipper on that account. Here, likewise, we see that the invoice and shipment 'on account' accompanied by a delivery, completely vested the goods, and took them from the possession of the consignor, even against the limitation in the bill of lading.

General property of bills of lading.

There are some other general properties of bills of lading, which, though falling more particularly under other divisions in this work, it may be useful to mention summarily in this present Chapter. Thus, as we have before said, a bill of lading is not a necessary instrument of the transfer of property in goods consigned to the owner. (*t*) It is another property, likewise, of this instrument, that it may operate as a contract between the master and consignee, or indorsee of the bill of lading, for payment of demurrage as well as of freight; for demurrage is, in fact, nothing more than an extended freight. (*u*) There is likewise no distinction between a bill of lading indorsed in blank, and an indorsement to a particular person; for it is a rule of the law merchant, that the indorsement and delivery of a bill of lading is an immediate transfer of the legal interest in the cargo to the assignee, provided it be an indorsement for value. But where goods are shipped without orders, the ownership is considered as remaining in the seller. (*w*) But an indorsement without consideration does not transfer the property; hence, such an indorsement to an agent, that he may receive the goods mentioned therein, will not, it should seem, entitle him to maintain trover in his own name. (*x*) But it is otherwise

(*t*) Meyer *v.* Sharpe, 5 Taunt. 80; and Giles *v.* Nathan, *idem.* pag. 558, supports the principle of Martini *v.* Coles, *ante.*

(*u*) Leer *v.* Yates, 3 Taunt. 387. See likewise Cock *v.* Taylor, 13 East 399. and Bell *v.* Kymer, 1 Marsh. 146, as to the obligation of the assignee, or indorsee, of the bill of lading, to pay freight, should he claim and receive the goods *under* it.

(*w*) Lickbarrow *v.* Mason, 2 T. R. 63.

(*x*) Coxe *v.* Harden, 4 East, 211. and *ante*, pag. 73.

General property of bills of lading.

where a bill of lading is indorsed and delivered to a creditor as a security for his debt on his own account. (y) Again, where several bills of lading of different import have been signed, no reference is to be had to the time when they were signed by the captain, but the person who first gets legal possession of one of them, by delivery from the owner or the shipper, has a right to the consignment; and where such bills of lading, though different upon the face of them, are constructively the same, and the captain has acted *bonâ fide*, a delivery, according to the legal title, will discharge him from all. (z)

It has, however, been decided upon a principle of manifest equity, and in conformity with the usage of merchants in the port of London, that, where the master of a ship receives goods on board, and gives a receipt for them, it is his duty not to deliver the bill of lading, except to the person who can produce the receipt in exchange for it. (a) Again, where the freighter has appointed the destination of the vessel, and the master has taken in goods, and signed bills of lading accordingly, he cannot change it without first recalling the bills, or at least tendering an indemnity against them. (b) The reason is indeed obvious; the master is himself a party to such bills, and bound to deliver the consignment, under ordinary circumstances, to a *bonâ fide* indorsee. In an early case it had been holden that the indorsement of a bill of lading by a factor, to whom it was sent, for value, and without notice of goods at sea, transferred the property, though such factor could not pledge the bill of lading or the goods. (c) But where the agents of the consignee, without his privity or confirmation, substituted other goods, in lieu of the original cargo, the substituted goods will not pass by a pre-

(y) Hibbert *v.* Carter, 1 T. R. 475

(z) Caldwell *v.* Ball, 1 T. R. 405.

(a) Craven *v.* Ryder, 6 Taunt. 433.

(b) Davidson *v.* Gwynne, 12 East. 381.

(c) Wright *v.* Campbell, 4 Burr. 2051.

vious indorsement by the consignee of the bill of lading. But an indorsement by the consignee for a valuable consideration transfers the property, though the vendee knows that only acceptances, not yet due, have been given for the goods. (*d*)

The case of Lickbarrow *v.* Mason, before cited, had determined (*e*) that the consignee of goods, by the assignment of the bill of lading to a third person for a valuable consideration, might confer an absolute right and property upon such assignee, indefeasible by any claim on the part of the consignor; subject, however, to this restriction, that the assignment should be made with good faith. In Cuming *v.* Brown, the same principle was more distinctly re-affirmed. In that case it was determined, that if the assignee of the bill of lading took the assignment, *bonâ fide*, without notice of any such circumstances as ought in fairness to have tied up the hands of the consignee from a transfer, he acquired, in all events, a good title against the consignor; and that, therefore, although he knew at the time that the consignor had not obtained an effectual payment for the goods, but had taken the consignee's acceptance, payable at a future day, not yet arrived, the consignor, nevertheless, could not defeat *his* title under the assignment, nor stop the goods *in transitu* upon the insolvency of the original consignee.

The other legal properties of bills of lading, and the extent and limitation of the rights of the holders, will fall more properly within the subject of a future Chapter, and more particularly the extent and limitation of the right under such bills with respect to stopping goods *in transitu*.

(*d*) Cumming *v.* Brown, 9 East. 506.

(*e*) See the judgment of Buller, J. in this case, 6 East. p. 30, *in notis*.

CHAPTER III.

OF THE COVENANTS IN CHARTER-PARTIES—THE SEAWORTHINESS OF THE SHIP—THE LOADING, VOYAGE, AND DELIVERY.

The fourfold division of the duties of master and ship-owners under charter-parties, &c.; *id est*, due appointment of the ship in stores, &c.; loading; voyage; and delivery.

HAVING in the two preceding Chapters considered the general nature of charter-parties and bills of lading, as the two usual instruments under which goods are conveyed by ship-owners for merchants; the order of our subject leads us now to treat of the due appointment and seaworthiness of the ship, by which such goods are to be carried; together with the manner of receiving, conveying, and discharging the cargo at the port of delivery. These requisites, which, as they necessarily belong to the masters and owners, are usually discussed by mercantile writers under the head of the *duties of master and owners*, by virtue of charter-parties, appear conveniently to distribute themselves under the four members—of the due appointment and seaworthiness of the ship; the loading; the voyage; and the delivery.

And first, as to the seaworthiness of the ship, and the due appointment in stores, &c.

Seaworthiness and due appointment of the ship.

The first stipulation, and usually the very first clause in every charter-party, is an agreement between the owner or master and the merchant, that "the said vessel shall be made by the said master (or owner) tight, staunch, and strong, sufficiently manned, and every way fitted for the voyage." This covenant, of course, comprehends the body of the vessel, her rigging and furniture, her

Of the seaworthiness of the ship.

provisions, and the crew; all of which, therefore, are agreed in the above stipulation to be in every respect fitted for the voyage, and for the due and safe navigation of the ship from her port of lading to the port of delivery. As the master is, therefore, bound to have his ship sufficiently appointed in all these particulars, a deficiency in any of them is a breach of his contract,' and an injury for which he is responsible, according to the damage. If the deficiency be so great as to render the voyage entirely fruitless, it would seem that the courts of law would consider the due appointment of the ship as a condition precedent, and upon this principle would not suffer the owner to recover any thing for a voyage which had been *wholly* injurious to the merchant; and to which the merchant might reply in substance the special circumstances discharging him from the obligation, and might, in addition, be entitled to maintain a cross action for the loss he had sustained. But, on the other hand, if the injury to the cargo be partial, the most usual mode of procuring satisfaction for such damage, and, therefore, the mode which the courts encourage, is the payment of the freight under the charter-party by the merchant, and afterwards an action for the breach of covenant and injury against the owner. By this mode of proceeding, the extent of the service rendered, or of the injury sustained in damage to the cargo by the unseaworthiness of the ship, is necessarily brought more distinctly to the attention of a Court and Jury than when they are joined together in the same action, and the one is pleaded in diminution of the other. This, indeed, appears to be the general and equitable principle of cross actions, not only as respects this subject, but all others; that unless the non-performance, negligence, or misfeasance, alleged in breach of the covenant, go to the whole root and consideration of it, the covenant broken is not to be considered as a condition precedent, but as a distinct covenant, for the breach of which the party injured may be compensated in damages. It has been determined, however, that if a consignee accept

goods, he cannot defend himself from the payment of freight on the ground that they have been damaged by the voyage. (*a*)

Seaworthiness and sufficiency of the ship, a duty of common law, and, therefore, of large interpretation, and which will be presumed if not expressed.

This engagement of the ship-owner, that his vessel shall be tight, staunch, &c., is, indeed, not so much a new engagement of the parties, between themselves, as a confirmation of the obligation imposed upon all carriers by common law. And thus, in Coggs *v.* Bernard, (*b*) Lord Chief Justice HOLT said, "The law charges the person (namely, common carrier, hoyman, master of a ship,) thus entrusted to carry goods, against all events but acts of God, and of the King's enemies;" so that a common carrier is an insurer against all perils or losses not within the exception. This common law duty gives a larger interpretation to the express stipulation of ship-owners, for the sufficiency of their ship, than would otherwise belong to it as a mere contract of the parties; and in the same manner will confine and restrict the legal acceptance of those precautionary notices, by which sea and river carriers, like land carriers, have sometimes attempted to qualify their engagement as common carriers.

In Lyon *v.* Mills, (*c*) the defendant, a ship-owner and carrier, had given notice, that "he would not be answerable for any loss or damage which should happen to any cargo which should be put on board any of his vessels, unless such loss or damage should happen to be occasioned by want of ordinary care and diligence in the master or crew of the vessel; when in such case he would pay to the sufferers 10*l.* *per cent.* upon such loss or damage, so as the whole amount of such payment should not exceed the value of the vessel on board whereof such loss or da-

(*a*) Shields *v.* Davis, 6 Taunt. 65. Davidson *v.* Gwynne, 12 East. 381; and see 4 Campb. 119; and *post.*

(*b*) 2 Lord Raymond, 909.

(*c*) 5 East. 428.

Lyon *v.* Mills. mage should have happened, and the freight of such vessel. And he gave further notice, that any merchant, or other person desirous of having their goods or merchandises carried *free of any risk*, in respect of loss or damage, whether the same should happen from the *act of God or otherwise*, might have the same so carried by entering into an agreement for the payment of an *extra freight*, proportionable to the accepted responsibility, on application to him or his agents. But under the principle that the sufficiency of a ship's hull was a common law duty, it was held, by the Court of King's Bench, that the owner was liable for the damage suffered, notwithstanding his precautionary notice; for that the law presumed a promise by him that his vessel should be tight, staunch, and sufficient; and that his precautionary notice could have no further effect than to limit the responsibility of the owner, in those cases only where the law would otherwise have made him answer for the neglect of *others*, and for *accidents*, which it might not be within the scope of ordinary care and caution to provide against.

Sufficiency of the ship comprehends furniture, crew, stores, &c.

The words "tight, staunch," and in every thing necessary for the voyage, and fitting for the navigation, manifestly comprehend not only the hull of the ship, but whatever is necessary to her navigation and due service, and extend to her furniture, crew, and stores of all kind. It is, therefore, the duty of the master to provide ropes, &c. proper for the reception of the goods into the ship; she must also be furnished with proper dunnage, or pieces of wood placed against the sides or bottom of the hold to preserve the cargo from the effects of leakage, according to its nature and quality. Her crew, likewise, must be sufficient to navigate the vessel, both as to number and to skill. This duty, indeed, is implied by common law under the general terms of the sufficiency of the ship. The parties, of course, may enlarge it, if they please, by express obligation; and, in such cases, the law will enforce the covenant as strictly as its terms. Therefore, in Beatson

v. Schank, (*d*) where the master had stipulated in the charter-party, that his vessel should be manned in a certain proportion to its tonnage, and that the whole number of men should be constantly on board; it was held by the court that this was a positive and absolute stipulation, and that sickness, death, desertion, &c., were no excuse for its non-performance, the owner having stipulated against all events; and having, therefore, by implication, obliged himself either to the performance of the thing, or to an equivalent satisfaction, according to the nature and degree of the failure.

The ship papers necessary for the voyage are likewise comprehended within "what is needful, &c. for the ship."

If the terms of the covenant in the charter-party be that the vessel shall be furnished "*with every thing needful and necessary for the voyage*," the master will be bound under such a stipulation to provide the vessel not only with the documents required by the laws of the country, but such as are required for her immediate admission into the foreign port mentioned in the charter-party. Therefore, in an action of covenant against the owner of a ship by a freighter, who had hired her for a voyage to the Mediterranean, it was held that such a vessel required a bill of health, and that the master was responsible under the covenant for not having provided this document. The charter-party stipulated that the ship should be "tight, staunch, and strong, and well and sufficiently manned, tackled, apparelled, and furnished with every thing needful and necessary for such a ship, and for the voyage hereinafter mentioned." The assigned breach of the covenant was, that a bill of health was needful, and had not been supplied. It appeared that a bill of health was a document not necessary for ships clearing outwards at the custom-house here, nor required by our laws to be taken by ships sailing to the Mediterranean; but that bills of health were issued to such ships, and generally carried by them. By the law of Sardinia, which has been long known to persons engaged

(*d*) 3 East. 233.

in the Mediterranean trade, a bill of health is required from all ships, even from England; and without one they are obliged to perform quarantine. Upon the arrival of the ship in question, at Cagliari, she was put under quarantine for want of a bill of health, and the voyage was thereby greatly delayed. GIBBS, C. J. held, that a bill of health was a document necessary for such a voyage, and was, therefore, within the covenant. It was not essential to the question that such a paper was not a ship's paper within the laws of this country. If it were necessary for the port whither the ship was sailing, and the captain had stipulated to provide all such necessaries, it was, of course, within such a stipulation. The words needful and necessary for a voyage oblige the defendant to have on board every paper required to advance or facilitate the voyage. (*e*)

Of the seaworthiness of the ship.

With respect to the seaworthiness of ships, the most important cases have arisen in questions of policies of insurance. There is, indeed, little distinction to be made between the nature and extent of the obligation from the merchant to the insurer, and that from the shipper to the freighter. We have said that, independent of the covenant in the charter-party, which only re-affirms and strengthens the general obligation, there is a tacit and implied agreement that the ship shall be seaworthy, and capable of conveying the goods in proper condition. It is not sufficient that the owner did not know that the ship was *not* seaworthy; for he ought to know that she was so at the *time* he charters her. The sufficiency of the ship is the substratum of the contract between the parties; and a ship not capable of conveying the goods in a proper state is a failure of the condition precedent to the whole contract. The seaworthiness of the ship is not a question of fraud or good intention, but it is a positive stipulation that the ship shall be so; and, therefore, although the owner may himself have been deceived by the ship-builder, repairer, &c. if

(*e*) Levy *v.* Casterton, 4 Campb. 389. and Holt's N. P. 170.

Of the seaworthiness of the ship.

the vessel be in fact unseaworthy, have an insufficient bottom, or unsound timbers, it is a breach of a preliminary condition; and is fatal, as such, to the contract. (*f*) In Eden *v.* Parkinson, (*g*) which was a case on a policy of insurance, Lord Mansfield said, "By an implied warranty, every ship insured must be tight, staunch, and strong; but it is sufficient if she be so at the time of her sailing. She may cease to be so in twenty-four hours after departure, and yet the underwriter will continue to be liable." But if a ship sail upon a voyage, and in a day or two become leaky, and founder, or is obliged to return to port without any storm, or visible or adequate cause to produce such effect, the presumption is, that she was not seaworthy when she was let out to freight, or sailed, and the jury may draw this conclusion. (*h*) The principles of law applicable to the implied warranty of seaworthiness, whether as respects the merchant freighter, or insurer, have lately been fully recognized and adopted by several cases upon appeals from Scotland in the House of Lords. The facts of those cases are not material; but in one case, with reference to a policy of insurance, and by analogy, therefore, to a contract of charter-party for freight, it was stated to be a clear and established principle, that if a ship be seaworthy at the commencement of her voyage, though she become otherwise in an hour from that time, the warranty is complied with, and the underwriter liable. (*i*) But in the same case it was also said by two noble Lords, "That when the inability of the ship to perform the voyage becomes evident immediately after leaving port, or in a short time after the risk commences, without any apparent cause of injury; the presumption is, that this inability has arisen from causes existing before her setting sail on the intended

(*f*) See further on this subject in the chapter on Exceptions in the charter-party, *post.* and perils of the sea.

(*g*) Douglas. 732.

(*h*) Munro *v.* Vandam, Park on Insur. 333.

(*i*) Watson *v.* Clark, 1 Dow. 336. and Park. 334.

Of the seaworthiness of the ship.

voyage, and that the ship was not then seaworthy. And the *onus probandi*, in such a case, is thrown upon the assured, to shew that the inability arose from causes subsequent to the commencement of the voyage." But as every man is presumed to know his duty, and to discharge it, it is a presumption of law that every ship, whether chartered or insured, is seaworthy; and the negative is to be proved in an action against the owner. The decision, however, in the above case, does not destroy the doctrine that the ship is *primâ facie* to be deemed seaworthy, but merely, that when a ship, soon after sailing, is found unfit to proceed, the question must be decided by some evidence, or natural inference from the circumstances. (*k*) In the House of Lords it has also been adjudged, that a vessel cannot be deemed seaworthy for a foreign voyage *without knees*. (*l*)

If it be necessary that the ship itself be sufficient for the voyage, it is likewise, as before stated, an implied condition, that she should be furnished with every thing necessary for the purposes of a safe and careful navigation. In Law *v.* Hollingsworth (*m*) the injury arose from the want of a duly qualified pilot on board; but it did not appear that this fact was known to the captain, and the pilot had since received his regular qualification. But Lord Kenyon said, " The ship herself must be seaworthy; she must have a sufficient crew, and a captain and a pilot of competent skill." On the ground, therefore, that there was no pilot on board when the accident happened, he was of opinion, there must be judgment of nonsuit. (*n*) And in a late case, in the House of Lords, Lord Eldon stated, that under this implied warranty, it is not only necessary that the hull of the vessel be tight, &c., but that the ship be furnished with *ground tackling*, sufficient to encounter the ordinary perils of the sea; and, therefore, where the best

(*k*) Parker *v.* Potts, 2 Dow. 23.
(*l*) Watt *v.* Morris, 1 Dow. 32.
(*m*) 7 T. R. 160.
(*n*) The action was brought by the assured against the underwriters.

bower anchor, and the cable of the small bower anchor, were found defective, the ship was not seaworthy. (*o*) Upon the same principle, in an insurance case, the Court of K. B. held, that there was a failure of the implied warranty, that a captain and crew of competent skill and knowledge for the voyage should be provided; the captain being so grossly ignorant as not to know Tarragona from Barcelona; the warranty in the policy being, that the vessel should not go higher up the Mediterranean than Tarragona. (*p*) So, likewise, it has been decided by Lord Ellenborough, that a vessel which is defective in sails necessary to facilitate her escape from an enemy, and to enable her to proceed with expedition, is not seaworthy; (*q*) nor if the crew be insufficient. (*r*)

Of the seaworthiness of the ship.

We have deemed it necessary to state the above cases at some length; for though they principally arose in questions on policies of insurance, they may be extended, by reasonable analogy, to charter-parties and bills of lading. The obligation of the owner, in both cases, is to furnish a ship tight, staunch, and strong; in other words, seaworthy: and whenever a case arises with respect to damage to goods through the insufficiency of the ship, the question whether the master or owner is liable to make good the loss to the freighter, will depend upon the point whether the ship was in a condition to perform the voyage, and to convey the goods safely, at the time of making the charter-party, or loading the goods on board; or whether she became defective from subsequent accident, and the perils of the wind and sea, which are excepted in the contract.

It has been before stated, (*s*) that the master is bound

Pilotage necessary for

(*o*) Wilkie *v.* Geddes, 3 Dow. 57.

(*p*) Tait *v.* Levy, 14 East. 481.

(*q*) Wedderburn *v.* Bell, 1 Camp. 1.

(*r*) Hunter *v.* Potts, Selw. 937. *n.*

(*s*) See *ante*, chap. on Pilots, Vol. I. p. 474. and Law *v.* Hollingworth, 7 T. R. 160.

the voyage but under the limitation of the 48 Geo. III. c. 104.

to take on board a pilot of competent skill, where the usage of trade, or the laws of the country, require that the ship shall be put under pilotage. It is added, in the same place, that by 48 Geo. III. c. 104. and 52 Geo. III. c. 39., no master or owner is answerable for any loss or damage by reason of no pilot being on board, unless in the case of either wilful refusal to take a pilot on board, or from negligence in not heaving to for the purpose of taking one on board who shall have offered himself.

Loading the ship.

The second main requisite under the charter-party, and therein the second main duty of the master and owner, respects the loading the ship; that is, the receiving and stowing the goods in a due and seamanlike manner.

The usual stipulation in charter-parties under this head, is, that the master or owner shall, "with all convenient speed, receive on board, load, and stow, in a regular and proper manner, all such goods and merchandises as shall or may be sent by the said freighter, alongside the said ship or vessel, in the said port of ——, not exceeding what the said ship or vessel can conveniently and safely carry over sea, besides her provisions, tackle, apparel, and appurtenances; the master's cabin and the usual and necessary room for the ship's crew excepted."

The duty and mode of loading by ship-owners and masters have an exact analogy with a similar duty of land-carriers; and are governed by the same principle, and subject to the same responsibilities. It is regulated in a great degree by the usage of the port or place at which the lading is received. In ship carriers, as, indeed, in all other trades, the usage of the port or place is an implied condition of the contract. It is what is necessarily known to both parties as a usage, and if omitted in the contract, is presumed to have been so omitted because a matter of

(*t*) See a form of charter-party in Appendix.

notoriety to all persons concerned. The first duty of the master, therefore, is to receive his lading according to the custom of the particular place. In some ports it is his duty to receive the goods at the wharf or beach, and thence take them either immediately into his ship, or bring them off in boats. In Corban *v.* Downe (*u*) it was found to be the custom of the port of London, with respect to goods intended to be sent coastwise, that the responsibility of the wharfinger ceases by delivery of them to the *mate* of the vessel upon the wharf. The general rule is, that the responsibility of the master begins where that of the wharfinger ends; and that he becomes liable for the goods from the moment they enter his custody, by a due delivery to himself or his petty officer. The sufficiency of such delivery is a question of fact for the jury.

The general rule of loading is to conform with the usage of the port.

The master is bound in the same manner as a land carrier by the acts of his servants; and if he should depute any of the crew to receive the goods for him, or should order them to be delivered generally on board his ship, such delivery would of course be sufficient to bind himself. But no man is to trust the servant of another beyond the point at which the master had himself ceased to trust him; and, therefore, a mere general delivery to the crew would probably not be sufficient, as the proper functions of the crew are to navigate the ship, and not to receive the lading.—They are the servants of the master, as his sailors, but not as his clerks and general agents.

The responsibility of the master, for the safe custody of the goods, commences from the time of their delivery. He is answerable for any theft, and even for robbery, though his crew should be overpowered, and neither he nor they in fault. The reason of this liability, where there is no fault, is the same with that of the liability of the common land-carriers. The goods are as completely beyond the care, as they are out of the dominion, of the owners. If

Masters responsible for theft or robbery in the port whilst taking in their cargo.

(*u*) 5 Esp. N. P. C. 41.; and see Morse *v.* Slue, 1 Vent. 190, 238.

masters were not liable under such circumstances, it would afford a facility to the greatest frauds and most criminal conspiracies. On the other hand, the case in which masters may innocently suffer are necessarily very few, and the profits of carriers may be presumed to be adequately adapted to the risk. The principle, therefore, extensive as it is, is productive of a great general good, and in very few cases of any particular evil. We shall point out, in another place, the limitation of the responsibility of ship-owners as settled by several acts of parliament.

Of the stowage of the goods on board the ship.

Another part of the duty of loading is, so to stow and arrange the different articles of which the cargo consists, that they may not be injured by each other, or by the motion or leakage of the ship. In Sheild *v.* Davies (*x*) the freighter of a ship refused to pay the freight under an allegation that the cargo was spoiled by bad lading. It was an action of assumpsit for the freight of a cargo of butter carried in a general ship, and received by the defendant under the bill of lading. It was offered as evidence, in defence, that the butter had been injured by bad stowage to a degree much beyond the amount of the freight; and it was contended that this was a sufficient answer to the action, as it shewed that no benefit had been derived from the carriage of the goods; and, at any rate, it might be given in evidence in mitigation of damages. It was admitted that bad stowage was an injury for which the master was responsible, but it was decided that the freight had been earned, and that the damage by stowage must be made the subject of a cross action.

It is unnecessary to insist further upon the obvious duties of the master under the heads of lading, stowage, &c. They are all comprehended under the general principle, that whatever he is bound to do either by his contract or by the usage of trade, he is likewise bound to do in a sufficient and seaman-like manner; and if he omit

(*x*) 4 Campb. 119.

or neglect it, or do it ignorantly or unskilfully, he is liable in damages for the consequences of his negligence or ignorance. (*y*)

Of the commencement and performance of the voyage.

The third main requisite under a charter-party, and therein the third main duty of the master is, the due and sufficient performance of the voyage.

This obligation upon the master is usually expressed in charter-parties by the words, "that the vessel shall, with all convenient speed, sail and proceed to such a port or so near thereto as she may safely get." Under these words, it is the manifest duty of the master to lose no time in the commencement of his voyage, but to sail with the first fair wind, immediately subsequent to the completion of his lading. Where, by the terms of a charter-party, a number of days is appointed for the lading of the cargo, either generally, and without payment on that particular account by the merchant, or by way of demurrage, the master must not sail before the expiration of the time. Upon the conclusion of this time he must sail from port with the first favourable wind, and thence proceed to the place of destination without delay; without stopping at any intermediate port, or deviating from the straight and shortest course, unless such stopping or deviation be necessary to repair the ship from the effects of accidents or tempest. He may likewise stop or deviate, to avoid enemies or pirates, by whom he has good reason to suspect that he shall be attacked if he proceeds in the ordinary track, and whom he expects to escape by delay or deviation; and he may sail to the places resorted to in long voyages for a supply of water or provisions by common and established usage.

Sailing with convoy,

It is usually a covenant in charter-party, made during war, that the vessel shall sail with convoy. In a preceding part of this treatise, we have had occasion to

(*y*) Goff *v.* Clinkard, cited 1 Wilson, 282.

Of sailing with convoy.

explain the principle and limits of the duty to sail with convoy.(z) It is now only necessary to add, that if the charter-party superadd any thing to the duties under the convoy act, usually passed during every period of war, the master is bound strictly to abide by such engagement; and he may not only lose his freight, but be liable in the whole value of the cargo, if lost from the consequence of his neglect to sail or keep with convoy. But the freighter, of course, may dispense with the covenant in which he has bound the master for his own benefit. Thus, in an action against the owner of a ship for a breach of this kind, it was held to be a sufficient defence that the merchant himself was the cause of it. The owner had engaged to sail from the river Douro to London with convoy; and the plaintiff had agreed to load her with 100 pipes of wines. In the morning of the 4th of November, the day appointed for the sailing of the convoy, she had completed her cargo, and was ready for sea, except that a number of pipes of the plaintiff's wine had not been put on board. The captain remonstrated repeatedly with the plaintiff's agents upon the delay, but was not able to get the last parcel alongside till mid-day. The other ships belonging to the convoy had before dropped down the river. He immediately followed them, and from that time used every effort to join the Commodore. Had the wind continued, he would have succeeded; but it fell calm, and all his endeavours failed. Lord Ellenborough held, under these circumstances, that the master was excused, the owner himself having caused the injury of which he complained; and, by implication, therefore, having waived the performance of the condition.(a)

But as a sailing with convoy necessarily affords an additional security to the ship and cargo; and as this condition, therefore, is a main inducement with merchants

(z) See Vol. I. chapter vii. page 485 to 495.

(a) Magalhaens *v.* Busher, 4 Campb. 54.

to send their goods; so a public notice that a ship will sail with convoy, or a bill of lading stating that a ship will so sail, amounts to an undertaking, binding on the owner, that the vessel shall sail according to such notice or bill of lading. (*b*) And where there is an undertaking to sail with convoy, it is no sufficient excuse that the master was prevented joining it by the state of the weather. It is his contract; and he must observe it, or pay the penalty.

Deviation for repairs of the ship, or necessary refuge from the perils of the sea and enemy; and payment of such repairs.

The master is required to sail for the place of destination with all practicable dispatch, and by the usual and shortest course. But as the safety of the ship, and the due conveyance of the cargo, are his first duties, he has a manifest right to make any necessary deviation, either for the purpose of repairs, or for a prudent and reasonable precaution in avoiding an enemy. In the case of repairs, he is authorized, as we have shewn in a preceding chapter, to hypothecate the ship; or, when money cannot be had upon such an hypothecation, to raise the necessary sum by a sale of part of the cargo. But the ship belonging to the owner, and the cargo to the freighter, and the damage more immediately belonging to the ship than to the cargo, and the captain being the servant of the owners and not of the merchant, are strong reasons of law and public expediency for confining this authority of the master over the cargo to the narrowest of limits; and, upon this principle, admitting even a partial sale of the cargo in no case, where the repairs can be procured by other means. It is, therefore, the duty of the master, in the first instance, to try the hypothecation of the ship, or the personal credit of his owners or himself; and in the event only of the total failure of these resources, and of the extreme necessity of the case for *the safety of the cargo* itself, to have recourse to a sale of it in part. The legal occasion

(*b*) Sanderson *v.* Busher, 4 Campb. n. 54. But where the bill of lading contains no such stipulations, it seems undetermined whether sailing with convoy be any part of the contract. Abbott, 644, Snell *v.* Marryatt.

and limits of hypothecation we have before fully explained. (*c*) A more usual mode, however, of procuring necessary repairs is by a bill drawn upon the owners at home. As the owners are answerable for all necessary repairs, stores, &c. the captain has, of course, an authority to draw such bills, either in favour of the person who provides the repairs, or of the person who supplies him with the money to pay for them. But this debt cannot be transferred to a third person without the privity of the owner. And, therefore, where a master of a ship had drawn a bill upon a third person for the necessary repairs of a ship, it was held by the Court that though the owner was bound to pay the repairs, he was bound only in the general manner of all contracts, and not to a payment in the specific kind and mode to which he had given no consent, and with which he had no privity. (*d*)

Liability of the owners to pay for repairs is divested by an express and exclusive credit given to another.

It is a general rule, that the law will not impose a contract upon a man against his own will and knowledge. Where there is a concurrence of equity and legal liability in favour of an obligation; where a strong equity demands it on the one part, and it is not opposed, on the other, by any incongruity with a principle or maxim of law, the law in all such cases will presume these tacit contracts. This, indeed, is the principle of all implied assumpsits. But the law will not extend this rule so far as to supersede the first principle of all contracts,—that intercourse, knowledge, and consent of the contracting parties, which constitute what is legally termed their *privity*. Hence it will not extend these implied contracts into cases and circumstances where such implication is rebutted by a fact directly contrary; such as by a distinct contract with another, or where there is a total ignorance and non-inter-

(*c*) See *ante*, Part II. chapter ii. page 385 to 389, where the authority of the master over the ship and cargo is fully discussed.

(*d*) Harden *v*. Brotherstone, 4 Campbell, 254. See likewise Rocher *v*. Busher, 1 Stark. 27, and Palmer *v*. Gooch, 2 Stark. 428, and *ante*, Vol. I. page 385.

course of the parties; and where the one had no contract with the other in contemplation. And, therefore, where a master, being in a foreign port, raised the money for repairs upon the sole and exclusive credit of the freighter, it was held that the owner was not liable, as the credit was not given to him. (*e*) The case was this:—The Margaret had been chartered by her owners, the defendants, to William Sharples, of Liverpool, for a voyage from Newcastle to Copenhagen and Pernau, and from thence to Liverpool, to bring home a cargo of deals and iron on his account, at certain specified rates of freight, which was partly to be paid "by advancing the master of the vessel, for the time being, what money he might require for the vessel's necessary disbursements at Pernau, free from any commission, at the current exchange." Upon the arrival of the ship at Pernau, Johns, the master, wanting money for the ship, produced the charter-party to a merchant there, who was the plaintiff in the action. Upon the credit of the charter-party the plaintiff advanced the required money for the ship's disbursements, and furnished certain stores of which she stood in need, amounting, altogether, to the sum of 364*l.* 19*s.* 11*d.* For this Johns drew a bill of exchange in favour of the plaintiff upon Sharples. The ship was lost upon the homeward voyage, and Sharples refused to accept the bill. GIBBS, C. J. was of opinion, that the defendants were not liable in this action. There was no privity established between them and the plaintiff. He appeared to have advanced the money on the credit of Sharples. He first sent for the captain, and he was shewn the charter-party before any part of the money was advanced. The captain could not be considered as the agent of the defendants when the money was advanced to him, and there was no implied promise on their part to repay it.

Harder *v.* Brotherstone.

But where the money necessary for repairs cannot

(*e*) Harder *v.* Brotherstone, 4 Campb. 254. and see this case *ante*, as to another point, Vol. I. pag. 387.

otherwise be procured, the master, as we have had occasion to state in a preceding part of this treatise, may raise it by a sale of part of the cargo; the necessity of the case giving him this right, and the end and object of the voyage (the safe conveyance, if not of the whole cargo, at least of as much as is possible) reasonably allowing it. (*f*) But, on the return of the vessel, the proceeds of such a sale must be paid to the freighter by the owner, or he may deduct it from the freight; the rule here being, that as the owners have a lien on the cargo for their freight, so the freighter has here a lien on the freight for his cargo. Hence, in an action by a freighter to recover for part of his cargo so sold, the Court would not admit the excuse that the freight had been transferred to a third party. (*g*)

In a case of extreme distress the master may hypothecate the cargo, or sell a part; but he cannot sell the whole, see *ante*, Vol. I. p. 415.

It has been before stated, that a case can scarcely occur in which the master will be justified in the sale of the whole cargo; (*h*) for as the object of the merchant is to procure the safe conveyance of the cargo to the place of destination, it is manifest that such object is injuriously terminated by the total sale of the cargo. But perhaps a better reason for this rule of law may be found in the public expediency of withholding so dangerous a power from the master; and thus rather suffering the smaller evil of the few particular hardships resulting from the prohibition, than incurring the danger of the most extensive frauds and mischief which such a power might occasion. Perhaps this restriction of the master has the same foundation with the liability of common carriers for losses by fire, robbing, &c. the preference of the less of two evils, the election of a limited and particular mischief instead of a principle which would afford facility to a general abuse. (*i*)

(*f*) See *ante*, Vol. I. part 2. chap. iii. p. 401. *et sequenter*.

(*g*) Campbell *v.* Thompson, 1 Starkie 490, and cited *ante*, Vol. I. part 2. chap. iii. p. 416.

(*h*) See the case of the Gratitudine, 3 Rob. 246. and Vol. I. part 2. chap. xiii. p. 401. *et sequenter*.

(*i*) See *ante*, Vol. I. p. 401, &c.

Limitation of the authority of the master over the ship and cargo:— See *ante*, Vol. I. p. 414, 415.

The master is, *de jure*, the agent of the owner of the vessel, who is, therefore, bound by his acts as to all consequences resulting from his conduct of the ship and of the voyage. But he has no such extensive relation to the owner of the cargo; as respects the freighter, he is only a carrier, unless specially constituted an agent or supercargo. (*k*) Therefore, except in a case of the last necessity, which requires the sacrifice or hypothecation, in part or whole of the cargo, as well as of the ship, no act of the master can affect the owner of the cargo. (*l*) We have before, indeed, had occasion to observe, that the master can, in no event, break up the adventure, and dispose of the *whole* cargo by sale; though, when the distress of the ship is great, and money cannot be obtained for her relief in a foreign port, either upon his own credit, or the credit of his owners, he may hypothecate, or even sell a part of the cargo, in order to enable him to convey the residue to its destination. It is doubtful, however, whether the master can act to that extent, which, in similar circumstances, but of a less valuable trust, the law would allow to an agent or servant, as being the presumable will of his master under the exigent circumstances of the case. Hence, (*m*) though under an extreme case of difficulty or danger, it might reasonably be presumed that the merchant freighter himself, if present, would direct a sale of the whole cargo, it is held to be still doubtful, in the courts of common law, whether the master should be entrusted with a power so open to abuse. (*n*)

(*k*) 1 Rob. 84, 151. 156.

(*l*) 2 Rob. 251.

(*m*) *Ante*, Vol. I. p. 416.

(*n*) We have fully discussed, in another part of this treatise the authority of the captain over the ship and cargo, as to sale, hypothecation, &c. Vol. I. chap. iii. p. 390, *et sequenter*. At the time that portion of this work was in the press, the case of Idle *v*. The Royal Exchange Assurance Company, 3 Moore, p. 115, had not been decided. That case, which was a decision of the Court of Common Pleas, seems, upon a first view, to extend the authority of the master over the cargo further than any preceding case. It must, however, be considered as deter-

Care of the cargo during the voyage.

It is another part of the duties of masters to take proper care of the cargo during the voyage. As he stipulates in his charter-party against any liability for injuries "by

mined strictly upon the *special facts* and *circumstances*, and not as propounding any new principle of law. The case was this:—Freight was insured on a ship and cargo of timber, from Quebec to London. The ship sailed from Quebec, and on her voyage down the river St. Lawrence sprung a leak; and it became necessary, for the preservation of the lives of the master and crew, to run her on shore. She took ground on the outside of a reef of rocks; and was there fixed and exposed to the full force of the stream, and in the way of the drift ice, then forming and floating down the river. One of the part owners, and AGENT for the others, resided at Quebec, and after two surveys, in which the surveyors stated as their opinion, that it would be prudent to sell the ship and cargo, the master, under the DIRECTION of such part owner, sold the same. The ship, however, survived; was repaired by the purchasers; and afterwards brought a full cargo to London. In an action on the policy against the underwriters on freight for a total loss, the Court of C. P. decided, *first*, that, under the circumstances, the master was warranted in selling the ship and cargo; and, *secondly*, that an abandonment of the freight was unnecessary.

It is to be observed in this case, 1. That the plaintiffs, who were the persons interested in the cargo, recognize and adopt the act of the master as done for the best under the circumstances. The Jury found, specially, that the master had acted fairly throughout the whole transaction, and *bonâ fide* for the benefit of all concerned; and that the sale was honestly and properly conducted. It was not a question, therefore, between the owners of the cargo and the master, whether the latter, under *any* emergency, could sell the ship and the *whole* cargo (though, perhaps, circumstances *might* occur which would even justify this large power in the master, acting in the absence of the owners, and without the possibility of communicating with them, but it was a question between the owners of the cargo and the underwriters on freight, in which case the authority of the master, acting for the interest of the whole adventure, has a more liberal extent. If the owners on the spot might have sold ship and cargo under the circumstances of this case, and have claimed compensation from the underwriters, it should seem that they might, expressly, or by implication, have deputed as large an authority to the master. The owners, by adopting the master's act, confirm and ratify it *ab initio*. This, therefore, is to be considered

the act of God and the king's enemies, &c." he is not responsible for any injuries arising from the sea or winds, unless, indeed, it be within his power to prevent such damage. Under this principle he is not responsible for injury to the cargo by leakage of the ship, if such ship were tight, staunch, and sea-worthy, at the commencement of the voyage, and has only become leaky by the wear and tear of the voyage, and under the action of the sea and weather. (*n*) But he is answerable for any other injuries to the cargo within his means of prevention. Hence, if his cargo be corn, and be injured by vermin, he will be responsible for the damage, unless he can prove that he resorted to all practicable means to extirpate them. (*o*) He is, likewise, responsible for goods stolen or embezzled on board the ship by the crew or other persons, or lost or injured in consequence of the ship sailing in fair weather against a rock or shallow known to expert mariners. (*p*) In a word, as he is bound to the exercise of all his care, diligence, and professional skill, and as he is guilty of an original breach of duty to the contracting parties, if he have undertaken the voyage without possessing such sufficient skill, he is responsible for all injuries whatever which may arise from negligence or ignorance. So where in a voyage from Hull to Gainsborough a vessel was sunk in the River Trent, by striking against the anchor

as a case where the master, under such incidents of the adventure as made the sale honest and discreet, acted as the authorised agent of the owners. In point of law the sale became *their* act through the master. 2. It is further to be observed in this case, that the sale was made by the authority of one of the part owners who acted as *agent* for the others; and, although part ownership in a ship is not like the case of a joint concern or partnership, as one part owner of a ship cannot bind the rest, it is still to be considered as an important circumstance in this case, that one of the part owners *actually directed the sale*,

(*n*) See *ante*, p. 83.

(*o*) Dale *v.* Hall, 1 Wils. 281. Davidson *v.* Gwynne, 12 East. 381. and Abb. 255.

(*p*) See this subject of the limitation of the owner's and master's responsibility treated *post.* in the chapter on Exceptions in the charter-party.

of another, which anchor lay under water, and without a buoy, whereby some goods in the former were injured, the owners were held responsible for the injury. (*q*)

Delivery of the goods.

The fourth requisite of the charter-party, and last duty of the master, is the safe delivery of the cargo in the port of its destination, and to the order or assigns of the freighter under the bill of lading.

The covenant of the charter-party, or bill of lading, under which this duty is imposed on the master, is usually expressed in the following terms, or terms of the same substantial import, in the charter-parties now in use:—"And the said master, upon his arrival there, (the outward port,) will address himself to the agents or correspondents of the said freighter; and, as soon after as may be, make a discharge, and a right and true delivery of the said goods and merchandizes, unto the agents, correspondents, or assigns of the said freighter, according to the bills of lading; and so end the said outward voyage."

Under this engagement, the master is bound to take the same care in the due delivery of the cargo as in receiving it on board. Concurrently with the delivery, or previous to it, he has a right to demand the payment of the freight and other charges, such as primage, &c. If he have any demand for general average, he must conform to the custom of the country and trade in which his charter-party was made, and take security only, but not detain the cargo for the due payment of their respective shares by the merchants concerned. (*r*)

(*q*) Proprietors of the Trent and Mersey Navigation, *v.* Wood, East. Ter. 1785, in K. B. 3 Esp. 127. and Abb. 256. But see chap. on Exceptions in the charter-party, *post.*

(*r*) Soldergreen *v.* Flight and another, Guildhall Sit. p. T. T. 1796, before Lord Kenyon, C. J., cited by Abbot, p. 258.

No notice of ship's arrival necessary to the consignee of the cargo.

As the holders of the bill of lading are presumed to be well informed of the probable period of the vessel's arrival, and as in any event such arrivals are matters of notoriety in all maritime places, it is not the duty of the master to send notice of his arrival to the several assigns of the cargo. In a case to which we have had occasion to refer in a preceding chapter, (*s*) the bill of lading contained a stipulation that the goods should be taken out in a certain number of days after the arrival of the vessel, or that the holders should pay for the delay. They were accordingly holden liable for this delay, although they pleaded in excuse that they had no notice of the arrival of the vessel. As the master is not bound to give this notice, it is of no consequence whether the residence of the holders of the bills of lading be known to him or not. But if the means by which the holders of the bills of lading are to obtain this information of the ship's arrival are defective; such as if there be any inaccuracy in the entry of the ship's name at the custom-house, whereby the owner of the goods, notwithstanding proper inquiries for that purpose, should be deprived of the usual mode of being informed of the ship's arrival, it then becomes the duty of the master to apprise him of the ship's coming to port.

Landing the cargo.

Though the master has a lien on the cargo for the freight, and is not bound to part with the goods till such freight be paid or tendered; yet as much inconvenience would arise from detaining them on board ship, where the assigns of the bills of lading could not examine them, the custom of merchants, and therefore the law, is, that the master should land the goods in some public dock or wharf, and there give them in custody to the dock-keeper or wharfinger, with an order not to part with them till the payment of the freight and other charges. Such wharfinger or dock-company then become the agents of the master,

(*s*) Chap. I. Part 3. Harman *v.* Clarke, 4 Campb. 159., and *ante*, p. 22.

and are responsible if they part with the goods without the freight; the lien being continued in the master through the custody and possession of the wharfinger as his agent.

Of the London and West India Dock acts.

The acts of parliament for the regulation of the several dock companies contain a provision for this right of shipowners, and this convenience of merchants. Thus, in the 44 Geo. III. c. 100, by which the London Dock Company is established and regulated, it is enacted, that if goods, brought into the Company's dock to be landed, are not duly entered with the customs and excise within *seven* days after the ship is reported at the custom-house, the officers of the company may cause the goods to be landed and warehoused under the joint locks of the officers of the customs and excise; and that if the duties are not paid within thirty days after the report of the ship, the commissioners of the customs, or proper officer of the excise, may sell them to satisfy the duties, rendering the overplus to the proprietor or consignee. And, by a subsequent statute (45 Geo. III. c. 58. sec. 16.) it is provided, that goods so landed and warehoused shall be subject to the same lien for freight in favour of the master and owners, as while they remained on ship-board; and the Company is authorized and required, upon notice given by the master or owners, to detain the goods until the freight shall be paid or satisfied, together with the rates and charges to which the same shall have become liable. And the lien of the captain continues on goods impounded in the West India Docks, though he have not given the Company notice to retain for his claim. (*t*)

The reason seems to be this:—The 39 Geo. III. c. 69. sec. 87. imposes a necessity on West India ships to land

(*t*) Wilson *v.* Kymer, 1 M. and S. 157. For the general construction of charter-parties, and of covenants therein, whether precedent, subsequent, or independent, see *ante*, Chap. I. *passim*.

their cargoes at the West India Docks; and the 45 Geo. III. c. 69. sec. 15. continues the master's lien for freight after the goods are out of his possession. The clause, however, is general, and not narrowed, either by its context, or reasonable intendment, to the particular case where notice is given; which is only to aid the party in enforcing such lien. Independently, however, of this construction, it seems a manifest principle of equity, that when goods are taken out of the hands of a party by operation of law, he shall never be prejudiced by it, but that the law will retain his lien for him. If goods on board of ship are taken out of the ship *invitum*, and by compulsion of law, the lien will be preserved in the *place*, and in the *hands*, where the law has deposited them. It is another question where the captain voluntarily gives up the goods, in which case he abandons his lien, and looks to the personal credit of the freighter.

The nature and principles of freight, of the mode of obtaining payment, of the lien for it, &c. will more properly fall under a future Chapter in which we shall separately treat that subject. The numerous cases which have arisen upon demurrage have already been cited and discussed. (*u*) It is sufficient here to observe, that the master has no lien on the cargo beyond the freight specified in the bill of lading. Therefore, in a case where a master had received a cargo abroad, and signed a bill of lading for a less amount than what the ship had been let for under a charter-party at home, it was holden, that the ship-owner had no lien on the cargo beyond the freight expressed in the bill of lading. (*v*) In the above case, a merchant abroad, having a just apprehension of the insolvency of his correspondent at home, who had chartered the ship, purchased a homeward cargo on his account; but, for his own security, took a bill of lading from the captain,

The master is bound by the bill of lading under which he receives the cargo.

(*u*) See *ante*, Chap. I. p. 13, *et sequenter*, of this Volume.

(*v*) Mitchell *v.* Scaife, 4 Campb. 298.

expressing, in the first place, a less sum for freight than under the original charter-party; and, secondly, that the cargo should not be delivered to the charterer of the ship without payment being made for the same to a person mentioned in the bill. Under these circumstances Lord Ellenborough held, that the ship-owner had no right to detain the cargo for more than the freight mentioned in the bill of lading; and that the charterer not having made the payment conditioned, had no right to the goods, but that they were rightly delivered to the assigns of the foreign merchant mentioned in the bill of lading.

The baggage of a passenger may be detained for his passage money. It is, indeed, scarcely necessary to say more upon this subject than that masters are in the analogy of common carriers, and have all the rights of that relation. They can detain the baggage, but not the person.

Of the delivery of the goods.

The mode of delivery, like that of loading, must be regulated by the practice of the place. It should seem, however, that a hoyman, known to use a particular wharf, is not discharged by delivering goods to the wharfinger, but continues to be liable until they are delivered to the party to whom they are directed. (*x*) It is, indeed, a general rule, that the master's responsibility continues till the goods are delivered to the consignee according to the ordinary usage of the trade, or the custom of the voyage; that is, either to his wharfinger or his servants, either in boats or on land. But if the consignee shall demand to have the cargo delivered over the vessel's side, and not landed on the wharf, the master is bound to compliance, a wharf being only a private right, and the wharfinger having no right to compel the public to make use of it. (*y*) But in Hyde *v.* The Trent and Mersey Navigation Com-

(*x*) 2 Esp. N. P. C. 693. Abb. 260. Wardell *v.* Mourellyan. See, too, Hyde *v.* Trent and Mersey Navigation Company, 5 T. R. 389.

(*y*) Syeds *v.* Hay, 1 Ter. Rep. K. B. 260.

Of the delivery of the goods.

pany, (z) Lord Kenyon held, that with respect to ships bringing goods from foreign countries to merchants at home, the owners sufficiently discharged their duty by landing them at the usual wharf. If the cargo be discharged into lighters, the duty of a master is regulated by the custom of the port or river, and he is to watch and guard them till they be fully laden. (a) But if the custom of the port, or the known and notorious usage of any particular branch of trade, require the consignee to unload, or superintend the unloading, in his own person, or by his servants, the master is of course discharged, or is only answerable for that portion of the duty which belongs to him. (b)

Of actions for the loss or non-delivery of the cargo, or injury done to it. By whom maintainable.

As it is the undertaking of the master to deliver the cargo to the consignee, and as it is conveyed at his risk, it follows, as a consequence, that the property of goods, shipped by order and for the account of the consignee, vests immediately in him; and he *alone* can sue for any injury which takes place after they are on board, or maintain an action for a conversion on a loss. (c) The same rule applies, though the consignee be resident in a foreign country; for a court of law will recognise, generally, no property but that recognised by the bill of lading. Therefore, the delivery of goods to a stranger, fraudulently representing himself to be the person entitled to receive them, would be a conversion, notwithstanding the master should have acted with the best intentions, (d) and the consignee might maintain trover against him. It is otherwise where the master loses the goods, in which case the

(z) 5 Ter. Rep. 397.

(a) Catley and Another v. Wintringham, Peake's N. P. C. 150. Robinson v. Turpin and Another, Guild. Sit. after T. T. 1805, before Lord Ellenborough, C. J.

(b) Dunnage v. Jolliffe, before Lord Kenyon, C. J. at Guild. Sitt. after Mich. Term, 1789.

(c) Brown v. Hodgson, 2 Camph. 36. Dawes v. Peck, 8 T. R. 330. Dutton v. Solomonson, 3 B. and P. 582.

(d) Youl v. Harbottle, Peake 49. and Syeds v. Hay, 4 T. R. 260.

action must be special; and an action against the master, or owners, for not delivering the goods, may be brought in the name of the consignor; for in this case the property of the goods is collateral only to the right of action; and and though the title be vested in the consignee, there is a breach of obligation, by non-delivery, to the consignor. (e)

(e) Davis *v.* James, 5 Burr. 2680.

CHAPTER IV.

Exceptions in the charter-party, and limitation of the liability of masters and owners.

In the former Chapter we have considered the positive and implied covenants of the charter-party and bill of lading. The subject of the present Chapter is, the exceptions which are expressed or implied with respect to the performance of those covenants; the extent in which they are to be interpreted; and the circumstances which either limit or excuse them altogether. The former Chapter explained the liabilities and duties of the masters and owners under the charter-party. The present treats of the circumstances which excuse the masters and owners for a non-performance of the contract upon their parts.

Limit to the common law liability of ship-owners by stat. 26 Geo. III. c. 89. in the case of fire.

It has been before stated, that common carriers, and ship-owners as such, are liable for all accidents and losses, not proceeding from the "act of God or the king's enemies." Under the ordinary relation of an agent or servant for hire, a carrier would be liable in all cases of negligence; whether such negligence were immediate, and therein the next and proximate cause of the damage; or whether it were remote, and therein only the cause of that by which the damage was occasioned. But as carriers are necessarily trusted by the owners with the dominion and custody of their property, and as great opportunities would be thus afforded for frauds under the pretext of accidents, the law, for the sake of public security, has deemed it necessary to regard carriers as placed in the additional relation of insurers; and, under that character, to extend their responsibility to all accidents and losses whatever, excepting only such as arise from the act of God

and the king's enemies. Under this obligation, therefore, carriers are, by common law, liable for fire, theft, and all other accidents, whether of fault or of mere calamity; the question not being whether the damage was occasioned by their fault, but whether it be not one of that description for which the law, and, therefore, the contract made under it, have rendered them liable.

By the 26 Geo. III. c. 86., which is an extension of 7 Geo. II. c. 15., ship-owners have been relieved from this common law liability in several instances. The legislature, in thus limiting their responsibility, has proceeded upon the same policy which dictated the navigation acts; commercial convenience and public good; to encourage the vesting of capital in shipping, by restricting the responsibility of ship-owners to the amount of their capital embarked; and to assimilate the law of England to that which had long been the law of other commercial countries; namely, that the owners, when not personally in fault, should be discharged from responsibility for damage occasioned by the master or crew on relinquishing the ship and freight.

Limitation of the responsibility of ship-owners by 26 Geo. III.

By the first section of 26 Geo. III. no person who is owner of any ship or vessel shall be liable to answer, or make good any loss or damage, by reason of any robbery, embezzlement, secreting, or making away with, of any gold, silver, &c., or other goods and merchandise, which shall be shipped on board any ship or vessel, or for any act, forfeiture, or damage, done or incurred, *without the knowledge* of such owner, further than the value of the ship, &c., and freight due, and to grow due for the voyage, wherein such robbery, embezzlement, &c. shall be made, although the master or mariners shall not be concerned in, or privy to, such robbery, embezzlement, &c.

It is further enacted, in the same statute, "that no owner, or owners, of any ship or vessel, shall be subject, or liable to answer for, or make good, to any one or more

person or persons, any loss or damage, which may happen to any goods or merchandise whatsoever, which, from and after the *first* day of September, 1786, shall be shipped, taken in, or put on board, any such ship or vessel, by reason or means of *any fire* happening to, or on board, the said ship or vessel,"

Not answerable for loss by fire.

Another section of the same act relieves the master and ship-owners from a liability to make good any loss of gold, silver, jewellery, money, diamonds, and watches, of which the shippers shall not have declared the value at the time of shipping. It is enacted, "that no master, owner, or owners, of any ship or vessel, shall be subject, or liable to answer for, or make good, to any one or more person or persons, any loss or damage which may happen to any gold, silver, diamonds, watches, jewels, or precious stones, which from and after the passing of this act shall be shipped, taken in, or put on board any such ship or vessel, by reason or means of any robbery, embezzlement, making away with, or secreting thereof, unless the owner or shipper thereof shall, at the time of shipping the same, insert in his bill of lading, or otherwise declare, in writing to the master, owner, or owners, of such ship or vessel, the true nature, quality, and value, of such gold, silver, diamonds, watches, jewels, or precious stones."

The same common law liability limited by the same act in case of the loss of gold, silver, &c.

Another section of this statute likewise enacts, that if the several freighters or proprietors of any gold, silver, &c., or of any other goods or merchandise, should suffer loss or damage by any of the means aforesaid, in the same voyage, (fire only excepted) and the value of the ship or vessel, with the appurtenances, and the amount of her freight, should not be sufficient to make full compensation "to all and every of them," then such freighters or proprietors shall receive their satisfaction in average, and in proportion to their respective losses. And in order to effect this purpose, a remedy is pointed out to freighters and owners, by filing a bill in equity, to which an affidavit

must be annexed. It is further provided, that nothing in this act shall discharge the common law remedy against masters and mariners, for " embezzlement, fraud, abuse, or malversation in such masters and mariners respectively."

Masters and ship-owners not liable for loss by incapacity of pilots.

The pilotage act (*a*) contains a further exception to the liability of ship-owners, by relieving them from responsibility for any loss or damage occasioned by the neglect or incapacity of any pilot, who may be taken on board in pursuance of the provisions of that act.

The last act diminishing the liability of ship-owners is the 53 Geo. III. c. 159. This statute was passed to amend the 7 Geo. II. c. 15., and the 26 Geo. III. c. 86, and further to limit the responsibility of ship-owners in certain cases, and more especially, for the acts of their servants. The several provisions of this statute enact, in substance,

(*a*) 52 Geo. III. c. 39. See *ante*, Vol. I. Part 2, Chapter VI., page 474.

Nor in any case liable to a greater amount than the value of the vessel and freight.

The first exception in favour of masters, and in diminution of their common law liability, was given by an earlier statute in the reign of George II. (7 Geo. II. c. 15.) which was passed at the earnest instance of the ship-owners and merchants of London, who had taken alarm at some recent decisions in the Courts of law that owners were answerable for the value of merchandise embezzled by the crew or master. In order to remove this alarm, and to prevent any discouragement to shippers, merchants, and others, from being concerned in trade and navigation, the legislature passed the act in question, by which the amount of the responsibility of owners for any goods embezzled or " made away with," by master or mariners, or for any malversation whatever of master or mariners, is limited to the value of the ship and freight. But the master or mariners themselves are liable, as before, for the whole amount of the damage suffered; the act only being for the relief of the owners, and this act being for their relief only in the case of goods embezzled or " made away with" by the master and crew. But by the 26 of Geo. III. c. 86., passed in consequence of the decision in Sutton *v.* Mitchell, (1 T. R. p. 18.) that the previous act did not comprehend robberies not by the crew, the same protection was extended to the owners, " although the master or mariners shall not be concerned or privy to such robbery, embezzlement, secreting, or making away with."

1. That owners and *part*-owners of ships shall not be liable to make good any loss or damage to any goods or merchandize laden on board their ships, beyond the value of the vessel and freight, provided such damage should be occasioned without their fault or privity. The object of this first clause was to give a protection to *part*-owners as well as to owners. The term *part*-owners is omitted in the preceding statutes, and introduced, for the first time, in the present; and it seems to have been the object of the legislature, by the first clause, to explain the words "owner or owners," used in the two previous acts, and to give a protection to *part*-owners, which might not, *perhaps*, have been extended to them under the general words, *owner or owners*, in the 7 Geo. II. and 26 Geo. III. 2. By the next section there is a legislative exposition of what is to be considered as freight, which the previous statutes had left in general and loose terms. The value of the carriage of goods and merchandize, though *belonging to owners and part-owners*, is to be considered within the meaning of the term freight; and also the *hire* of the vessel due, or to grow due, by virtue of any contract, whether on behalf of His Majesty, or of any person or persons, or any body politic or corporate. 3. The act then provides for separate losses; (c) but declares that nothing therein contained shall be taken to diminish the responsibility to which any master or mariner may now by law be liable, notwithstanding such master or mariner may be an owner or part-owner. 4. The act next proceeds to except the owners of lighters, barges, boats, &c. employed in inland navigation, and ships and vessels not duly registered.

Protection of owners and *part* owners by 53 Geo. III. c. 159.

Exposition of this act.

Such are the principal clauses of this act; the remaining sections of which relate to proceedings against owners and part-owners in courts of equity.

(c) See Appendix, 53 Geo. III. c. 159, sect. 3.

Wilson *v.* Dickson.

In a very late case upon this statute it has been determined by the Court of King's Bench that the meaning of the first and fourth sections, taken conjunctively, was; 1. That in an action against several joint defendants, as ship-owners, for damage sustained by the loss of goods laden on board their ships, they were not liable in that character beyond the value of the ship and freight due, and to grow due; although the loss were occasioned by the misconduct of one of the defendants, who was both *master* and part-owner. 2. That the value of the ship was to be calculated at the time of the loss, and not at the time of the commencement of the voyage. 3. That in calculating the value of freight due, or to grow due, the money actually paid in advance was to be included. (*d*)

The clause of the charter-party, or bill of lading, which limits the liability of the master and owners, by express exceptions, usually runs in the following terms: (*e*) "and the said master agrees to make a right and true delivery of the said homeward cargo, unto the said freighter or his order, according to the bills of lading; and so end the said homeward voyage, the act of God, and the King's enemies; the dangers and accidents of the seas, rivers, and navigation; the restraints and detentions of kings, princes, rulers, and republics; and all and every other unavoidable dangers and accidents excepted."

Legal meaning of the act of God.

The act of God comprehends all sudden accidents arising from physical causes, as distinguished from human agency; such as from lightning, earthquakes, hurricanes, plague, and epidemic contagion amongst the crew. (*f*)

(*d*) Wilson *v.* Dickson, 2 B. & A. p. 2. The reader is referred to the masterly exposition of this statute in the judgment of Mr. Justice Bayley, p. 10.

(*e*) See Appendix.

(*f*) Trent and Mersey Navigation Company, *v.* Wood, Abbott, p. 249, and Forward *v.* Pittard, 1 T. R. 27.

For none of these are masters or ship-owners responsible. But in order to constitute such an effect from a physical cause the act of God within the understanding of the law, it must be sudden and immediate. And, therefore, where a vessel struck upon a bank of sand, which for many years previous had been sufficiently under water to admit ships to lie by it in safety, but had been raised by a drift of sand into the port or river; it was holden by the Court that an accident which had arisen from this cause was not to be considered within the legal meaning of the act of God. (*g*) Another ship had previously struck upon the sand-bank above mentioned; and the vessel which was the subject of the action had received the injury in being pierced by the mast of the first vessel, lying under water upon the bank. The Court held that such injury was too remote to be regarded as the act of God—the proper interpretation of such act being, something sudden and immediate, such as lightning, hurricane, earthquakes, &c.

Legal interpretation of perils of the sea.

The other terms, "perils and dangers of the seas, and accidents of the seas, rivers, and navigation," are to be understood of all such accidents as arise from the sea and winds, and which could not be prevented or avoided by any care, vigilance, or skill of the master and mariners; such accidents as are inevitable, and in no degree occasioned by the ignorance, wilfulness, or neglect of the navigators. Thus, a capture by pirates has been held to be within the exception of the perils of the seas. An action was brought upon a charter-party, containing such exception, for not performing the voyage; the defendant pleaded that the ship was taken *upon* the sea by certain

Pirates a peril of the sea.

(*g*) Smith *v.* Sheppard, Abbot 263. This case having given great alarm to ship-owners, suggested to them, in order for future protection, an alteration in the bill of lading, which, instead of the usual exception, *perils* of the sea, contains *now*, in almost all cases, an exception of the act of God, the king's enemies, fire, and all and every other danger and accidents of the sea, rivers, and navigations, of whatever nature and kind.

warlike persons unknown, whereby he was prevented from completing the voyage. (*h*) Rolle, J. said, that it was not good pleading to allege the capture by persons unknown; and Bacon, J., seemed to think that the plea should have alleged that the ship was carried into unknown places; but, upon the principal question, it was held that perils of this kind were as much dangers of the sea as those by shipwreck or tempest.

A peril *on* the sea not properly a peril *of* the sea. But this distinction only material in the declaration.

But where the damage or accident alleged to have happened from the peril of the sea has not properly arisen from any natural effect of the winds and waves, such as from tempest, high seas, rocks, collision, or leakage, the cause must be specially stated, and in its proper terms, in the pleadings.

In an action against the underwriters of a ship, from London to the Canary Islands, (*i*) it appeared that while the ship Industry was proceeding on her voyage, and was off Lisbon, in the night-time she fell in with another ship, the Midas, an armed merchantman, from London. The Midas hailed;—the captain of the Industry did not hear what was said; but, supposing the name of his ship was asked, answered, "The Industry of London, bound for Teneriffe." The Midas again hailed. The captain of the Industry mistakingly thought he was desired to heave to, and he did so. The Midas supposed the Industry to be a French privateer, about to board, and fired several shot at her, which hit her between wind and water, and sent her to the bottom. The Industry's crew were taken on board the Midas, and found her prepared for action. The first count of the declaration alleged a loss generally by the perils of the seas; and to this the defendant pleaded the general issue. The second count stated, that the ship,

(*h*) Pickering *v.* Barkeley, Sty. 132. 2 Roll. Abr. 248. S. C. Barton *v.* Wolliford, Comb. 56. and Morse *v.* Slue, 1 Vent. 190.

(*i*) Cullen *v.* Butler, 4 Campb. 289.

with the goods on board, was, on the high seas; by the perils insured against, (that is to say) by being fired at and pierced with shot by persons on board a certain other ship or vessel, called the Midas, sunk and totally lost. To this the defendant demurred, and the plaintiff joined in demurrer. Upon the trial it was contended for the plaintiff, that it was clearly a peril of the sea. But Lord Ellenborough held, that this was a peril *on* the sea, but not a peril *of* the sea. That the assured might be entitled to recover from the underwriters, but not upon a declaration so framed. Suppose, said his Lordship, a ship under sail is sunk by a land battery, is that a loss by the perils of the sea? And can it make any difference that the shots are fired with premeditation and design from another vessel?

Of perils of the sea.

It is unnecessary here to observe, that this objection applies only to the form of the declaration, and not to the principle of the case.

If the action in the preceding case had been brought by the freighters against the master to recover for the damage sustained in the cargo from the above cause, there can be no doubt that the master would have a sufficient defence to the action in the words of the usual restriction in charter-parties and bills of lading; "the dangers and accidents of the seas, rivers, and navigation, &c. excepted."

The present restrictive clause in bills of lading will cover all accidents *on* the sea, as well as *of* the sea; subject only to the exception, that the master and crew are not in fault, neither wilfully nor negligently.

An exception of *perils of the sea* extends to a loss arising from a vessel running foul of another by misfortune. (*k*) And where a ship is run down by another, not through design, but negligence, the loss is a peril of the sea. (*l*) So likewise, where, in moving a ship from one part of a harbour to another, it became necessary to send two of the crew on shore to make fast a new line, and to cast off the rope by which the ship was made fast; but

(*k*) Buller *v.* Fisher, 3 Esp 67. (*l*) Smith *v.* Scott, 4 Taunt, 126.

Of perils of the sea.

these men being impressed, and not suffered by the press-gang to cast off the rope, the ship, in consequence, went on shore: the Court held the loss occasioned thereby to be a peril of the sea. (*m*) But where a ship hove down on a beach, within the tide-way, to repair, and was thereby bilged and damaged, the Court of Common Pleas, in an action on a policy of insurance, decided this to be a loss *not occasioned* by perils of the sea; but an accident. It is to be presumed, however, that in an action on a charter-party the determination would be different; the ordinary terms being "all and every danger and accident of the sea, rivers, and navigation, of whatsoever nature and kind excepted." (*n*) It was decided by Lord Kenyon, in conformity with the general opinion of the merchants of London, that the destruction of a vessel by worms at sea, was not a loss by *perils of the sea*. (*o*) In charter-parties, as we have before said, if the vessel freighted be robbed or taken by pirates, it is to be deemed a loss within the meaning of the words, "perils of the sea;" and where a ship was driven on shore, part of the goods being lost at sea and part got on shore, but whilst on shore were destroyed and plundered by the inhabitants, so that no part of them came again into the possession of the master and crew, Lord C. J. Gibbs was of opinion that this was a loss by perils of the sea. (*p*) But a loss happening by the mistake of the captain is not a peril of the sea. (*q*)

Damage by being taken in tow, or by bearing up to a king's ship under signal, a peril of the sea.

If the cargo be injured by the rolling of the vessel, by the straining of her planks and timber, by high seas, by putting herself under tow, or by being forcibly taken in tow, or damaged from any of these causes, the injury is imputable to perils by sea. The ship Henrick, (*r*) in 1810,

(*m*) Hodgson *v.* Malcom, 2 N. R. 336.

(*n*) Thompson *v.* Whitmore, 3 Taunt. 227.

(*o*) Rohl *v.* Parr, 1 Esp. 415.

(*p*) Bondrett *v.* Hentigg, Holt's N. P. 149.

(*q*) Park. 103.

(*r*) 1 Stark. 157.

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sailed from the Elbe for the port of London, with the insured goods on board, and on her passage fell in with His Majesty's gun-brig, the Aggressor. The captain of the Henrick, mistaking the Aggressor for a French ship, produced simulated papers, concealing the British licence under which he sailed. The Aggressor took the Henrick in tow; and the latter, in order to keep up, was obliged to use an extraordinary press of sail, and during a gale of wind and a high sea shipped a quantity of water, by which the goods were damaged. In an action against the underwriters, the witnesses attributed this consequence to the exertions made in order to keep up with the Aggressor. Lord Ellenborough held, that the cause assigned was clearly a peril of the sea; for that the sea running high, and the vessel shipping a great quantity of water, the damage was occasioned by the perils of the sea, although the apprehension of seizure, and the circumstance of her being towed by the Aggressor, laid the vessel open to this peril. The same principle manifestly applies to any damage suffered in consequence of bearing up to a king's ship where a signal shall be made, or a gun fired by the commanding officer for that purpose.

But this excuse, and the principle of it, will not extend to justify captains and owners for any obedience to an unauthorized direction or command of His Majesty's officers; or to relieve them from a full responsibility to freighters for any damage to the cargo, in consequence of such compliance. A loss happening in the course of such an act will not come within the perils of the sea in the legal interpretation of the restrictive covenant. In an action for the loss of a ship and cargo, (s) it appeared, that whilst the ship Margaret and Anne was lying in port, the master having taken in almost the whole of the cargo, the captain of an English ship of war lying near, the top-mast and yards of which were then struck, ordered

(s) Phelps v. Auldjo, 2 Campb. 350.

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the master of the ship Margaret and Anne to go out to sea to examine a strange sail, which was discovered in the offing, bearing enemies' colours. It appeared that the master did not remonstrate against this order, but unmoored, and put out to sea; that, although forty of the crew of the ship of war had been on board the Margaret and Anne in the morning of the same day, they had all been withdrawn before the master began to unmoor, and that no violence or threats were used to induce them so to do. He fired two guns at the strange sail, and brought her to, when she appeared to be a neutral;—and he then returned to his moorings. Being examined as a witness, he said he considered himself bound to obey the orders of the captain of the ship of war, but he did not make any protest upon the occasion. It was contended for the plaintiff that the deviation was excused by the controul exercised over the master. He did not expostulate, because his expostulations would have been unavailing. The captain of the ship of war had ample means of enforcing his orders. If this was held to be a fault, the consequence would be, that masters of merchantmen would constantly resist the commands of the king's officers. But Lord Ellenborough was of opinion that it was an unexcused act; for that there was neither duty nor duress, neither a moral nor physical compulsion. If a degree of force had been exercised towards the captain, which either physically he could not resist, or, morally as a good subject, he ought not to have resisted, the deviation is justified. (*t*)

Previously to the case of Smith *v.* Shepherd mentioned before, the usual clause of exception in charter-parties and bills of lading was, "the act of God and the king's enemies, and the perils of the sea." After the decision of that case, the exception was enlarged into the more ample terms, "all accidents of the seas, rivers, and navigation, &c." But as this precautionary notice is in direct dero-

(*t*) See likewise Forster *v.* Christie, 11 East. 205.

gation of the liability imposed upon ship-owners by the common law, it is very questionable whether the Courts would give it a larger interpretation than what the law had previously admitted to the ancient form. Where the law has imposed a certain duty, and a certain degree and kind of responsibility upon certain functions, for reasons of public convenience, a diminution of this responsibility is a manifest opposition to the reason and purpose of the law; and it would seem upon principle, that the law should neither permit it; or, at least, should restrain such private limitations within the narrowest terms. The law, indeed, always acts upon this principle in the interpretation of the precautionary notices of common carriers, and thus confines the operation of such restrictions within circumstances in which there is a strong equity for admitting it. The Courts will certainly apply the same strict mode of interpretation to the new clause of charter-parties and bills of lading whenever any cases shall arise immediately upon it. It is not, however, to be doubted that masters and owners have greatly protected themselves by this enlargement of the terms in their exception.

Of perils of the sea.

If ships are run down by each other, *without the fault of the master of either*, such accidents, as we have before shewn, are within the perils of the sea.(*u*)

Running down ships within the perils of the sea.

But(*x*) where a hoy ran against the pier of a bridge, and foundered by reason of the shock, and the merchant endeavoured to recover of the owners by alleging that the injury would not have occurred if the vessel had been stouter, the Court held that the conveyance was sufficient of its kind, and that the freighter had no right to expect more.

The clause of "the restraints and detention of kings, princes, rulers, and republics," extends only to actual

The master is bound to the performance

(*u*) Buller *v.* Fisher, 3 Esp. 67. (*x*) 1 Stra. 128. Bull. Nisi Prius, p. 69.

of a specific covenant against all excuses; he must either perform or satisfy the breach of it.

A bonâ fide departure, under the reasonable apprehension of an embargo, no excuse.

embargoes; and will not excuse the master for the non-performance of an absolute covenant, where the cause of such non-performance was a reasonable apprehension only that such detention and embargo were about to be imposed. In Atkinson *v.* Ritchie, (*y*) it had been mutually agreed between the merchant and master, that a British ship, the Adelphi, should proceed from London to St. Petersburgh, there to load a complete cargo of hemp, and proceed therewith back to London, and there deliver the same, restraint of princes and rulers on the same voyage always excepted. The ship accordingly sailed; and, having arrived at her port of loading, took in iron for ballast, and a certain quantity of hemp; and was proceeding with all due diligence to load his full cargo of hemp, when about the ninth day a rumour was circulated of an embargo being about to be laid by the Russian Government on all British vessels. The person who was agent for the British factory at Cronstadt, and agent also to the house at Petersburgh, (who were the agents to the merchant charterer of this ship,) in consequence of instructions received from the British Consul General at Petersburgh, desired the captains of such British vessels as were ready to proceed to sea, and to do so as soon as possible, as he expected an embargo might take place immediately. In consequence of this the master gave orders to leave off screwing down hemp, and to fill the ship as fast as possible by hand; and the whole day was employed in this way, and the ship filled as far as could be done by hand. In the evening the ship sailed with something more than half the cargo that she could have carried, if the hemp had been screwed down; the merchant had a sufficient quantity of hemp for a full cargo lying by the ship's side, in lighters. Many other British vessels sailed the same evening, or the next morning, without full cargoes; some, however, remained, and afterwards completed their lading; and were not

(*y*) 10 East. 530.—See this case cited *ante*, upon other points.— See likewise Forster *v.* Christie, 11 East. 205.

detained by the Russian government. No embargo was, in fact, imposed, until six weeks after this time; and the ship would have completed her loading within that period. The master sailed away without any communication with the defendant's agents at Petersburgh, who came to Cronstadt as soon as they had notice of the circumstances, with intention to stop the ship, but arrived too late. The master acted *bonâ fide*, and as an honest man; and there was reasonable and well grounded apprehension for his acting as he did. The goods taken on board were brought to London, and there delivered to the merchant. The merchant sued the master for not bringing a complete cargo, according to his contract. It was argued that the master was excused, either by the operation of this clause in the contract; or by that general principle of law, which requires every subject, as a matter of public duty, to save the property and persons entrusted to his charge from falling into the hands of the enemies of his country. But Lord Ellenborough held, that as the master had made an absolute and specific contract, he was bound either to perform it, or to be answerable in damages for the non-performance; for, where there was no exception in the contract, the law always gave it this construction; that the party, so absolutely contracting, intended to bind himself against all events; and that, if he would not execute it, he would be responsible for the non-performance. That the courts had always acted upon the rule laid down upon just principles in Paradine *v.* Jane,(z) "That when the party by his own contract creates a specific duty or charge upon himself, he is bound to make it good, notwithstanding any accident by inevitable necessity; because he might have provided against it by his contract," and because, not having so provided, it is to be intended that he undertook against it either as to performance or satisfaction. Under these circumstances his Lordship held, that the master was not excused; and

Atkinson *v.* Ritchie.

(z) Alleyn. 27.

further decided, that the "restraint of princes, rulers, &c." in the charter-party, was to be understood of an actual and operative restraint only, and not a mere expected or contingent detention.

Tonteng *v.* Hubbard.

But if the ship of a country, at that time at peace with our own sovereign, be hired by a British subject, but before sailing, or in the course of it, be detained by an embargo by the British government, such detention will not be such a restraint of princes, as shall give the master of the neutral any demand upon the British freighter for his loss by freight. A charter-party (*a*) was made between a British merchant and the master of a Swedish ship, by which it was agreed, that the ship should proceed with all convenient speed to the island of St. Michael, for a cargo of fruit; and return therewith to the port of London, restraint of princes and rulers during the voyage always excepted. In an action by the master against the merchant for not employing the ship in pursuance of this agreement, it appeared, that the vessel having sailed from London in commencement of her voyage, but being driven by storm into Ramsgate Harbour, had there been detained by an embargo suddenly ordered by the British government, against all Swedish vessels; and had been detained under this embargo from the month of January till June, at which latter period the season for shipping fruit at St. Michael's was over. Upon an offer by the master to proceed on his voyage after the embargo had been removed, the merchant replied that the ship could not be loaded at St. Michael, the season for shipping fruit there being passed. The actual damage the plaintiffs sustained by the sailing on the voyage till the ship was driven back, by paying the sailors during the embargo, &c. amounted to 397*l.* 6*s.* 6*d.* for which they obtained a verdict, subject to the opinion of the Court on

(*a*) Tonteng *v*, Hubbard, 3 B. and P. 291.—See likewise Isabella, Jacobina, 4 Rob. 77.

a case stating the above facts. Lord Alvanley, C. J., in delivering the opinion of the Court, said, that the defendant, having expressly dispensed with the plaintiff's proceeding to St. Michael's for the cargo as soon as the embargo was at an end, no objection could arise on the ground of his not having completed the voyage. But the ground of decision in this case was, that a British merchant is not liable to answer any damage arising from hostile embargoes by his own government on the vessels of foreign states. Upon this ground, therefore, judgment of nonsuit was ordered.

CHAPTER V.

OF PRIMAGE, PRIVILEGE, AVERAGE, AND PASSENGERS.

Signification of the terms primage, &c.

IT is a usual stipulation in charter-parties and bills of lading, that the delivery of the goods shall be made on the payment of freight with *primage* and *average* accustomed. The word "primage," signifies a small payment to the master for his care and trouble with repect to the goods, which he is to receive to his own use, unless he has otherwise agreed with his owners. This payment appears to be of very ancient date, and is variously regulated in different voyages and trades. It is sometimes called the master's *hat-money*. By the word average is signified several petty charges, which are to be borne partly by the ship, and partly by the cargo, such as the expence of towing, beaconage, &c. Primage and average are often commuted for a specific sum, or a certain per centage on the freight.

Privilege regulated by the custom of trade.

Privilege is an allowance to the master of the same general nature with primage; being a compensation, or rather a gratuity, customary in certain trades, and which the law assumes to be a fair and equitable allowance, because the contract on both sides is made under the knowledge of such usage by the parties. If the existence of such privilege be questioned, the Courts will enquire into it by the evidence of merchants.

In an action by the owners against the captain of an East India ship, it was contended for the captain, that the stipulation of a sum in lieu of privilege and primage

did not exclude him from the use of the cabin, customary in East India ships. (*a*) By the contract between the parties, he was to receive a certain sum in lieu of privilege and primage; but, under an alleged custom of trade, he had still retained a part of the cabin for himself, and employed it for carrying goods, for which he had received the freight. The owners brought the action for the amount of this freight; and contended that the terms of the contract excluded all right on the part of the captain to use the cabin for the carriage of goods on his own account. The evidence offered for the defendant was chiefly a conversation between the plaintiff and himself, by which it appeared that both of them understood the term privilege in this qualified sense. Gibbs, C. J., admitted this evidence, upon the principle that the word privilege was a term of very indeterminate signification; that in general it must be taken to mean what the mercantile part of the nation understand it to be in their several trades; but that the parties in a particular contract might limit or enlarge this sense. The evidence being accordingly admitted, and proving that privilege in the trade in question was always understood in the sense contended for by the captain, and was so understood by the parties in the action, the Court accepted it in that signification, and the defendant had a verdict.

Of the conveyance of passengers.

The conveyance of passengers by merchant vessels is connected with some important objects, both individual and mercantile. As respects the passengers themselves, it is a duty of humanity on the part of the legislature to take due precaution against the avarice of masters and owners, and to provide that no greater number of passengers should be taken on board any vessel than the tonnage and stores of such vessel can accommodate with respect to health and necessary sustenance. As respects the merchant and freighter, it is equally necessary to

(*a*) Birch *v.* Depeyster, 1 Starkie, 210.

provide, that their interests shall not be impaired or endangered by any connivance between the master and crew in privately sharing the profits of passengers. And, as respects the public interests, as our statute book contains several laws against the emigration of artificers, and, of late years, against the ingress and residence of foreigners without licence, it is manifestly incumbent on the legislature to secure the accomplishment of these objects of national policy; and, by providing for the notoriety of vessels bringing in, and taking out, passengers, to keep such importation always under the eye of the law.

With these purposes several acts of parliament have been passed, (*d*) the principal of which, as constituting the present law of passengers, is the 43 Geo. III. c. 56.

Provisions of the 43 Geo. III. c. 56. for the safe conveyance of passengers by merchant ships, &c.

It is enacted, by the above act, that "from the first day of July, 1803, it shall not be lawful for the master or commander of any British ship or vessel, which shall clear out from any port or place in the United Kingdom of Great Britain and Ireland, to have on board, at or after being cleared out, at any one time, or to convey, carry, or transport, from any place or places in the United Kingdom, to any parts beyond sea, in such ship or vessel, a greater number of persons, whether adults or children, including the crew, than in the proportion of one person for every two tons of the burthen of such ship or vessel; and every such ship or vessel shall be deemed and taken to be of such tonnage or burthen as is described and set forth in the respective certificates of the registry, granted in pursuance of the several acts in force relating to such certificates; and, if such ship or vessel shall be partly laden with goods, wares, or merchandises, then it shall not be lawful for the master or commander to receive or

(*d*) 43 Geo. III. c. 56. 53 Geo. III. c. 36. 56 Geo. III. c. 83. 56 Geo. III. c. 114.

take on board a greater number of persons, including the crew, than in the proportion of one person for every two tons of that part of the vessel remaining unladen; and such goods, with which the vessel may be partly laden, shall, under the direction of the collector or comptroller, or other officer of the customs at the port or place where such goods, wares, or merchandise, shall be taken on board, be stowed and disposed of in such manner as to leave good, sufficient, and wholesome accommodation, for the proportion of persons hereby allowed to be received on board." And, "if any master or commander shall take on board, or if he or the owners shall engage to take on board, a greater number of persons than in the proportion allowed by this act, such master, &c. shall forfeit 50*l.* for every person exceeding the proportion limited; and every ship or vessel, having on board, conveying, carrying, or transporting, one or more persons beyond the proportion herein limited, shall be seized and detained by the collector, or other officer of the customs, until such penalty or penalties shall be paid, or until such master, the owner, or owners, of such ship or vessel shall give good and sufficient bail for the payment thereof." And "every such ship or vessel, bound to any port or place in North America, shall be stored and furnished with at least twelve weeks' provisions, and good and wholesome water, sufficient to afford an allowance per day during the voyage of not less than half a pound of meat, one pound and a half of bread, biscuit, or oatmeal, with half a pint of molasses, and one gallon of water, to every person on board, whether adult or child; and the master or commander is hereby directed and enjoined to give out, to each person on board, at least the allowance herein directed upon every day of the voyage, under the penalty of 20*l.* for every omission; and any person demanding a clearance for any ship or vessel which shall not be stored with provisions and water in manner herein directed, shall forfeit the sum of 50*l.* for each person for whom there shall not

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be a quantity of provisions and water sufficient to afford the allowance herein directed."

It is further provided, by the other sections of this act, that before any vessel shall receive a clearance, or sufferance, from the officer of customs belonging to the port from whence such vessel shall sail, the master shall deliver to such officer of the customs a muster-roll, distinguishing the passengers from the crew, and specifying the names, ages, and sex, of the persons received, or to be received, on board, and the conditions upon which such persons severally have been or are to be received, and the place to which such persons have severally contracted to be conveyed; and that every person delivering a false muster-roll shall forfeit, for every offence, the sum of 50*l.* for each person omitted, or falsely stated or described therein. Every passenger shall be relanded, who shall signify a desire to that effect to the officer of the customs, or to any magistrate; and no passenger shall be taken, except from a place where a custom-house is established, or an officer of the customs is stationed. Every vessel carrying fifty passengers, or upwards, including the crew, shall be provided with a surgeon, and such surgeon with a medicine chest; that the bedding of every passenger on board shall be aired by exposure upon the deck, when the weather will permit, once a day during the voyage, and the vessel shall be fumigated with vinegar at least twice in every week; and every master or commander shall forfeit, for every failure or neglect in airing the bedding, or in fumigating the ship or vessel, the sum of 20*l.* The act then directs that a journal of the health, deaths, &c. of the passengers shall be kept, and delivered, upon oath, to the collector of the port on the ship's return. (*e*)

Number of passengers to

The ten first sections of this act refer only to the

(*e*) See section 1 to section 10.

passengers to be taken on board British ships clearing out for any port of the United Kingdom to any ports beyond sea; the eleventh section regulates the number of passengers to be taken in foreign ships. It is enacted by this section, that it shall not be lawful for any master having the charge or command of any ship, other than a British ship, owned, navigated, and registered, according to law, clearing out from any port in the United Kingdom, from and after the said first day of July, 1803, to have on board a greater number of persons, including the crew, than in the proportion of one person for every five tons of the burthen of such ship; and every such ship shall be deemed to be of such tonnage or burthen as shall be ascertained by the oath of the master or commander thereof, taken before the collector, or chief officer of the customs, at the port whence such ship shall be cleared out; and it shall be lawful for such collector or chief officer to muster the passengers and crew, and to search and inspect every such ship; and if more persons shall be found on board than in the proportion herein allowed, every master or commander shall forfeit the sum of 50*l.* for every person taken on board beyond the proportion herein allowed, one moiety whereof shall go to His Majesty, his heirs or successors, and the other half to such collector, or other officer, who is hereby empowered to seize and detain the ship until such penalties be paid. By the 56 Geo. III. c. 114., all the regulations of the 43 Geo. III. c. 56., provided with respect to *foreign ships* carrying passengers, shall be applicable to *British ships* carrying passengers from Great Britain and Ireland to the United States of America, as fully and effectually as if the same were severally repeated and re-enacted in the act.

be taken on board foreign ships.

By other clauses of the 43 Geo. III. c. 56., a penalty is attached to the re-landing provisions after any vessel shall have been cleared out, unless in the proportion of any passenger or passengers who shall have been lawfully re-landed, so as not to proceed upon the voyage. Officers of

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His Majesty's ships of war, who shall meet any such vessels at sea, are authorized and required to call for the muster-roll, and to search such vessel; and, in any case of breach in the regulations of the act, whether as to the number of the passengers, or the quantity of provisions, such officers may seize and detain the vessel till due bail shall be given, or may send her back to the port from whence she came, or any other, according to the circumstances. And, before any vessel taking passengers shall be permitted to clear out, a bond shall be given to the chief officer of the customs in the port whence cleared out, in an amount equal to the sum of 20*l.* for each passenger on board, with condition that such vessel is seaworthy, and that every passenger, if alive, shall be landed at the port to which such passenger shall have contracted to be conveyed. (*f*)

53 Geo. III. c. 36.

The object of the next act of parliament for the regulation of passengers, the 53 Geo. III. c. 36. is chiefly to regulate the carrying of passengers by vessels in the service of the Hudson's Bay Company. But the first section of the act contains a general regulation of much importance. After premising that it is enacted by the 43 Geo. III. c. 56. that every ship or vessel, other than a British ship or vessel, owned, navigated, and registered, according to law, shall be deemed and taken to be of such tonnage or burthen as shall be ascertained by the oath of the master or commander thereof, taken before the collector, or other chief officer of the customs, at the port from whence such ship or vessel shall be cleared out, but that such remedy for ascertaining the tonnage of vessels had been found insufficient: it proceeds to enact, that if the collector have any doubt as to the tonnage of any vessel as sworn to by the master or commander, it shall be lawful for him to cause such vessel to be admeasured in the manner in which a British ship is admeasured for the purpose of being

(*f*) This act does not extend to vessels in the king's service, or in the service of the Postmaster-General, or the customs, or excise, or The East India Company.

registered, and such ship or vessel, upon being so admeasured, shall be deemed and taken to be of the tonnage or burthen ascertained by such admeasurement, notwithstanding the oath of any such master or commander. Of the conveyance of passengers.

The last act, with respect to the conveyance of passengers, is the 56 Geo. III. c. 83., and has for its object the regulating of vessels engaged in the conveyance of passengers to and from the island of Newfoundland and the coast of Labrador; but as the regulations are confined to these vessels only, it is unnecessary to repeat its enactments at large. It will, therefore, be sufficient to observe, that it was passed upon the occasion of a purpose suddenly adopted by the government to encourage emigration to this colony; but as the event has not justified the expectation entertained, the act has, necessarily, become of less importance than was anticipated. The 43 Geo. III. c. 56. may, therefore, be regarded as containing nearly the whole law respecting the conveyance of passengers by British ships. It is for this reason that we have given its enactments at some length. 56 Geo. III. c. 83.

Our law books contain several cases of importance under the head of passengers; but the greater number of them are rather cases of oppression, ill-treatment, or neglect of duties by masters, than breaches of the regulations required by the acts above cited.

As passengers are a part of the crew, and in a case of imminent peril by tempest or capture, may be called upon to contribute to the defence or preservation of the vessel, and as their conduct may be inconsistent with the due discipline of the ship, and may, by example, excite or cherish a mutiny in the crew, it is manifestly necessary that the captain should have some controul and authority even over the persons of passengers. Most of the cases in the books have originated in the excess and abuse of this authority and controul. If the law entertain a just

jealousy of the conduct of men in the condition and circumstances of captains, as respects even the sailors, who receive a profitable pay; still more strongly does it exercise its vigilance over them as regards their treatment of passengers; men necessarily subject to their power, and though not attached to their service, paying for their conveyance.

Of the authority which the captain of a ship may exercise over a passenger.

It is above said, that the passengers are bound to contribute their aid towards the defence of the ship, and that the captain has an authority over them so far as is necessary for that purpose; that he may compel them to take any station he may assign them, and may punish them for disobedience, to prevent their example from spreading to the crew. But this authority must be exercised within the limits of the necessity. The court has recognized this principle and its bounds in several cases. (*g*)

Boyce *v.* Bayliffe.

The first of these cases was an action for false imprisonment, by a passenger on board an East Indiaman, against the captain. It appeared, in evidence, that the plaintiff was a passenger in the gunner's mess, and that the defendant was captain of the ship. On the evening of the 11th of May, 1805, near the Cape of Good Hope, two strange sail were descried in the offing, supposed to be enemies. The defendant immediately mustered all hands on deck, and assigned to every one his station. The plaintiff, with the other passengers, he ordered on the poop, where they were to fight with small arms. This order all readily obeyed, except the plaintiff, who, conceiving he had been ill used by the defendant some time before in being forbidden to walk on the poop, positively refused to go there, but offered to fight in any other part of the ship with his messmates. The defendant, for this contumacy, ordered him to be carried upon the poop, and there kept him in irons during the whole night. Next morning no

(*g*) Boyce *v.* Bayliffe, 1 Campb. 58., and Boyce *v.* Douglas, 1 Campb. 60.

Of the authority which the captain of a ship may exercise over a passenger.

enemy appeared; and the vessel arrived safe at St. Helena, on the 17th of June. Here the plaintiff quitted her, and gave 100*l*. for his passage home on board another ship. Upon the opening of the case Lord Ellenborough said, he did not know, till he should hear all the facts, whether the defendant might not have *justified*. A captain of a ship had authority to do what was necessary for the safety of those on board. On the approach of an enemy he had a right to assign them all a station, which it was their duty to accept. As the plaintiff had refused to obey the orders given him, perhaps his confinement might be necessary to the discipline of the crew, and the security of the vessel; and, if so, would be justifiable in law. But, upon its appearing that the plaintiff had been kept all night in irons on the poop, his Lordship was of opinion, that the defendant had exceeded the limits of his authority. Upon the merits of the action, as to the plaintiff being justified in taking a passage on board another vessel at the defendant's expence, and claiming to recover the expence of that passage, Lord Ellenborough said it was necessary the special damage should be closely connected with the trespass, which was the foundation of the action. But here the imprisonment was not the *causa proxima* of the transhipment. The latter was remote in point of time, and the plaintiff was not driven to it in order to redeem himself from any great peril or grievance. That a man may tranship himself and throw the expence of this upon another, the injury must continue down to the moment of his leaving the first ship; and he must then act with a view to the preservation of his life, or at least from a reasonable regard to his own safety. To shew how far attempts of this kind might be carried, if this necessary connection were not insisted on, his Lordship alluded to a case which used to be mentioned by Lord Alvanley, where the plaintiff complained of false imprisonment, *per quod*, being confined on shore, he lost a lieutenancy. (*h*)

(*h*) The plaintiff obtained a verdict and damages.

Boyce *v.* Douglas (*i*) was an action by the same plaintiff against a passenger of the same vessel, for having assisted the captain in the alleged act of imprisonment. The jury, likewise, in this case gave a verdict for the plaintiff.

(*i*) 1 Campb. 60.

CHAPTER VI.

OF FREIGHT.

Of the nature of freight.

IN the preceding Chapters we have considered the several covenants of the masters and owners, and the duties arising under them. In the remaining Chapters we have to treat of the covenants, expressed or implied, of the merchant and freighters. These covenants, and the rights derived under them, are comprehended under the four heads of freight, general average, stoppage *in transitu*, and salvage; of which the first is generally a duty under a positive and express contract, whilst the three latter are equitable liabilities, or rights, imposed or implied by the law under the circumstances of the relation of owners and merchants.

As freight may either be due in whole or in part, and may be payable by the consignor or consignee, this portion of our subject naturally distributes itself under the four heads of, first, the cases in which the entire freight is due; secondly, in what cases part only can be claimed; thirdly, by whom payable; and, fourthly, of the lien for freight, and the action which may be maintained for it.

And, first, as to the cases in which the whole freight is due.

In order to explain the principle upon which the law of these cases rests, it may be useful to observe, that the abour or service rendered, for hire, by one man to another, is necessarily one of two descriptions; either it is beneficial to the hirer, *pro ratâ*, in such part of it as may have been done; or it is totally fruitless, and without benefit to him, unless the whole service be completed. If a builder, for example, be employed to build a house, but by

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some accident, or his own wilfulness should leave the work when he has only completed three parts of it, such three parts of it are manifestly of proportionate value to his employers: he may accordingly recover *pro ratâ* for the work done, although he has not completed it. But if a person contract with a carrier or messenger that a package shall be delivered to some distant correspondent, and such carrier or messenger go only part of the way, or from error, or some other cause, return without the due delivery of the package, it is here manifest that the service is wholly useless and without benefit to his employer; and that, in not having done all, he has in fact done nothing. In this latter case, therefore, as no service has been rendered, there is neither a legal nor equitable claim for any remuneration; the express contract of the employer being, that he would only pay for the performance of the service, and there manifestly being no implied contract that he should pay for that from which he derives no benefit.

Of the entirety of the contract.

The contract for the conveyance of merchandize is in its nature an entire contract of this kind; and, accordingly, unless it be completely performed by the delivery of the goods at the place of destination, the merchant is not bound to pay freight, because he has derived no benefit from the time and labour employed in a partial conveyance. This is the general principle, and the reason of it: and, if there are some exceptions to the rule, they will be found to rest upon the peculiar equity of the cases in which they occur; and will be discussed more particularly under a subsequent division in this Chapter.

It is necessary to observe, that the legal meaning of the term *freight* is, the money due for the actual carriage of goods. And, therefore, in Blakey *v.* Dickson, (*a*) where the action was brought for money agreed to be paid for receiving goods on ship-board in order to be transported,

(*a*) 2 Bos. and Pull. 321.

and where this money was termed *freight* in the declaration, the Court decided that such money could not be sued for or recovered *by the name of freight*. But in a case where the declaration stated that the master had undertaken to carry some goods from London to Lisbon, and the merchant, in consideration of such undertaking, had agreed to pay the freight upon the shipment at London, and where the bills of lading denominated such payment by the name of freight, Lord Ellenborough held that such a payment was freight advanced; and might, as such, be recovered back, unless the voyage was performed. (*b*)

Of the nature of freight.

If the ship be captured, the owners, of course, lose their freight, as well as the merchants their goods. But if the vessel be re-captured and proceed afterwards with the cargo to the place of destination, the right to freight revives, and becomes due upon the completion of the voyage. (*c*) The same rule extends to a resumption of an interrupted voyage after the removal of an embargo by which it was so suspended. (*d*)

The amount of the freight is usually settled in express terms in the charter-party or bill of lading. If in the charter-party, it is generally a gross sum for the whole voyage. Sometimes it is so much for every ton; sometimes, for every cask or bale. Where the stipulated payment is a gross sum for the whole ship, or for any distinct part of the ship, such whole ship or part is the subject of the hire; and, therefore, the gross sum must be paid, though the merchant may have failed in completing his lading. If the agreement be for so much for every ton, payment must be made according to the actual measure and capacity of the vessel, and not according to the quantity laden.

(*b*) Mashiter *v.* Buller, 1 Campb. 84.

(*c*) The Race Horse, White, 3 Rob. 101; and Beale *v.* Thompson, 3 Bos. and Pul. 420, and 431.

(*d*) See Curling *v.* Long, 1 Bos. and Pul. 637; and Beale *v.* Thompson.

If the agreement of the freighter be to pay a certain sum for each cask or bale, he must pay according to the number of such casks or bales shipped and delivered; and though the captain may not have brought the whole numbe agreed for, the merchant must pay for the number actually brought; the principle here being, that each has here a good demand upon the other; the one for the freight, and the other for the breach of agreement, in not bringing a full cargo. But as the master has rendered some portion of beneficial service to the freighter, he shall recover proportionately. (*e*)

The general rule of freight is, that it is not due unless the ship perform the voyage. Unless where there is a special contract, or where the nature of the service is such, that a partial performance is a manifest beneficial service to the freighter.

Gibbon *v.* Mendez.

There is a manifest distinction between an imperfect performance in contracts of this kind, which are by their nature divisible into separate quantities of service; and entire contracts, where the only beneficial service is the performance of the *whole* stipulation. Accordingly, where the contract has left the freight, according to the usual nature of freight, to be paid only upon the arrival of the vessel, the Court will give the most strict interpretation to any clauses which seem to dispense with this condition. In a very recent case before the King's Bench (*f*) it had been covenanted in the charter-party that the freighter should pay to the owner a certain sum per ton monthly freight, for the term of six months at least, and so in proportion for less than a month, or for such further time than six months as the ship might be detained in the service of the freighter, until her final discharge, or until the day of her being lost, captured, or last seen or heard of; such freight to be paid to the commander of the ship in manner following, namely, so much as might be earned at the time of the arrival of the ship at her first destined port abroad, to be paid within ten days next after her arrival there, and the remainder of the freight at specific periods. It was holden by the Court that this constituted

(*e*) Ritchie *v.* Atkinson, 10 East. 295.

(*f*) Gibbon *v.* Mendez, 2 Barn. & Ald. 17, and see *ante*.

one entire covenant, and that the arrival of the ship at her first destined port abroad was a condition precedent to the owner's right to recover any freight, and that the ship having been lost on her outward voyage, the owner was not entitled to recover freight at so much per calendar month to the day of the loss. Bayley, J. said in substance, that as freight was not payable by the law merchant, unless in the event of the arrival of the ship, it is always to be presumed that the parties made their contract with this understanding, and had no intention of paying in any other event; and therefore, where the freighter derived no beneficial use from the voyage, it can only be by the most express stipulation that he could be charged with freight. If the charter-party be silent, it must be understood that the freight is due only in the ordinary way, that is, upon the arrival of the vessel, and the successful completion of the service. Abbott, J. added, that it was competent to the parties to have made the freight payable at all events, but that they had made it due only on a contingency which had never occurred.

Of the nature of freight.

Gibbon *v.* Mendez.

It may be therefore assumed as a general rule and principle, that if the complete service be not rendered, no freight is due and recoverable, unless the completion of the voyage be prevented by the freighter's own act, or with his consent, by himself or agents.

But if the freighter himself, or his agents, or consignee, dispense with the performance of the voyage, and accept the cargo at any other place, the freight will be due. Thus, where a ship was freighted with coals from Shields to Hamburgh, such coals to be delivered to certain consignees named in the charter-party: upon the arrival of the vessel off Cuxhaven, the captain was prohibited from proceeding to Hamburgh by the commander of His Majesty's naval force on that station; in consequence of which, he sent intelligence of his arrival at Cuxhaven to

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the agents of the freighter, and of the impediment to the farther prosecution of his voyage. The agents replied to him by letters, directing him to bring his vessel to Gluckstadt, where they would send lighters to receive the cargo. The *master obeyed;* arrived at Gluckstadt, and delivered the greater part of the cargo; and would have delivered the whole, but the French having entered Hamburgh, the British consul ordered them, and all other British captains, to return to England. Upon his return the freighter refused to pay freight, under the allegation that the voyage had not been performed. But the Court of King's Bench held, that as the master had been prevented from a due delivery by the restraints of princes, and as the agents of the freighter had further accepted the cargo at another port, the freight was due *pro ratâ* for the cargo delivered. (*g*) Upon the same principle, if a consignee accept goods, he cannot defend himself from the payment of freight, on the ground that they were damaged on the voyage. (*h*)

Of dead freight.

If the merchant have covenanted to furnish a complete lading, or a specific number of casks or bales, and failed to do so, he must make good the loss which the owners have sustained by his failure, to be settled, in case of disagreement, by a jury, who will take all the circumstances into their consideration, and make a due allowance to the merchant for the profit which the master may have made by bringing the goods of other persons, if any have been brought. (*i*) But, if the merchant do not covenant to furnish a complete lading, although the charter-party express the vessel to be hired by the ton, and that the freighter should pay so much for every ton of goods which he should lade on board; there the owners can only demand payment for the quantity of goods actually shipped. (*k*)

(*g*) Christy *v.* Row, 1 Taunt. 301.

(*h*) Shields *v*, Davis, 6 Taunt. 65. See likewise Davidson *v.* Gwynne, 12 East. 381.

(*i*) Puller and Another *v.* Staniforth, 11 East. 232.

(*k*) Lady James *v.* The E. I. Company, before Kenyon, C. J. at Guildhall, Sit. p. Mich. Ter. 1789.

Of the nature of freight.

If the charter-party express that the merchant shall pay a certain sum for every month, week, or other portion of the voyage; the vessel in this case is hired by the month, week, or other portion of time, and not for the whole voyage collectively; and, therefore, whatever necessary delays may occur, whether by winds and seas, or in harbour for repairs, such delay belongs to the freighter, who must pay it to the ship-owner according to the stipulated portion per month, week, &c. If such charter-party do not express the day from which the payment is to commence, it will begin from the day from which the ship breaks ground, and commences her voyage. (*l*) And if the ship be embargoed or detained by contrary winds, or by any other delay, short of hostile capture, the delay in the same manner belongs to the freighter, who hires by time. (*m*)

Query as to the right of the merchant to abandon the cargo for freight in certain extreme cases.

It is manifest that a cargo may suffer more or less in the carriage by sea; and the injury may sometimes be so great, as to render the freight of more worth than the goods. Under these circumstances, there is some doubt whether, by the law of England, the merchant is bound to receive the goods, or is at liberty to abandon them for the freight. The general principle, and the law under it, may be summarily comprehended in the following proposition. The law of England so far adopts the maritime law of Europe, and the usage of merchants, that whatever is a rule of this law-merchant may be generally assumed to be a rule of the law of England, unless where such rule is either contrary to the established maxims and principles of our law, or unless where a contrary rule has been laid down by the Courts in previously adjudged cases. But wherever there is no such contrary authority, nor any incongruity with the received maxims of our own law, there, any rule or usage of the law-merchant of Europe

(*l*) Curling *v.* Long, 2 H. B. 634. Havelock *v.* Geddes, 10 East. 555.

(*m*) Moorsom *v.* Greaves, 2 Camp. 627. By a month in mercantile contracts is understood a calendar month, and not a lunar.

Of abandonment for freight.

will be accepted as a good plea in our own courts; and will, most probably, be adjudged to be the law merchant of England. The question of the abandonment of damaged goods, for their freight, rests upon this principle. Now, according to the mercantile law of Europe, the merchant is entitled to abandon in certain cases. The conclusion, therefore, seems to be, that in cases of a like kind he may abandon by the law of England.

The cases, however, in which this abandonment may be made, appear to be those *only* in which there was a natural possibility for the master to have prevented the damage sustained, although the circumstances may not be sufficiently strong to make him responsible for actual negligence. This, indeed, seems to be the reason of the law merchant in adopting the rule, namely, to take a further security against the fraud, wilful or passive negligence, or carelessness of the master. And, therefore, if the damage have proceeded from the fault of the master or mariners, the merchant is entitled to a satisfaction, and may recover it by an action at law. But if the merchant receive the goods, he must pay the full freight, and cannot plead the damage to the cargo as a defence against an action for freight; nor can he select part, and reject the rest. (*n*) If the goods be damaged by the perils of the sea, and the merchant receive them, he must pay the freight, and cannot recover for the damage. (*o*) And, if the deterioration have proceeded from natural decay, or from any principle of corruption inherent in the goods themselves, such as the rotting of fruit, the perishing of corn by its own vice, the loss here belongs to the merchant, and he must pay the freight as well as bear the damage. But in the case of the leakage of wines, liquors, &c. the general

(*n*) Milles *v.* Bainbridge, Guildhall, December 20, 1804, before Lord Ellenborough, C. J.; and Davidson *v.* Gwynne, 12 East. 381. and *ante*, p. 138.

(*o*) Hotham and Others *v.* E. I. Company, Doug. 272. Lutwidge *v.* Grey, see *post.*

law merchant allows the freighter to abandon for freight. And, impliedly at least, the law of England seems to admit the same principle, although there is no decision, in direct terms, on the point. Accordingly, in Lutwidge *v.* Grey, (*p*) it was assumed by the counsel on both sides, and was not questioned by the Judges, that the merchants might have abandoned the whole cargo. And, in Baillie *v.* Mondigliani, (*q*) Lord MANSFIELD said, "the owner of the ship has a lien for freight; but, in a total loss, literally so called, no freight is due; in a case of a loss total in its nature, with salvage, the merchant may either take the part saved, or abandon."

Of abandonment for freight.

Secondly, As to those circumstances under which the master and owners may claim *pro ratâ itineris*; that is, where a portion only of the freight is due.

Cases in which a portion of the freight only is due.

We have before had occasion to state the general principle of all freight, namely, that the performance of the voyage is the only beneficial interest to the freighter. It is thus the service for which he stipulates, and upon the performance of which only, in general circumstances, he receives his part of the contract, and is bound in turn to perform his own obligation. Therefore, if the voyage be not performed, he has not received that particular and specific service for which only he agreed to pay. It is nothing for the master to urge that he was not in fault; but was hindered by misfortune, or even absolute necessity, from the performance. From whatever cause the failure proceeded, the specific act agreed upon is not done; and, therefore, the freighter is not bound to pay for it. If, by the misfortune of the master, the misfortune is *his*,

(*p*) Determined in the House of Lords, 1783. The whole point, however, did not come before the Court, nor was even contemplated by the council; the merchants having a clear right to abandon in that case, because the vessel was wrecked, and the goods saved, at a place short of the port of delivery.

(*q*) Park. cap. ii. p. 70.

Cases in which a portion of freight only is due

and *he* alone must suffer it. If by his fault, he pays for his fault. Such services, in fact, are in the nature of bargains or contracts upon contingency, where the contractor upon contingency has no cause of complaint that he suffers any thing against equity or law, if, upon the non-occurrence of the contingent event, he loses what he was to receive upon its occurrence only. It is in fact only the loss of a wager or venture. It seems necessary to insist upon this principle at more length, as the ordinary objection, that the master was not in fault, throws an obscurity upon these cases of imperfect performance which, upon more deliberate consideration, will not belong to them.

The general rule, therefore, as before-stated, is, that if the voyage be not performed, and the cargo delivered at the port of delivery, no freight whatever is due for a partial performance. But this rule admits exceptions according to the justice of the case. The first class of exceptions comprehends those cases, in which the service is in its nature divisible, and where even a partial performance is proportionately beneficial to the freighter. Thus the partial freight will be due when the ship has performed the whole voyage, although she has brought a part only of the merchant's goods in safety to the place of destination. In the same manner, a partial freight will be due where the ship has not performed the whole voyage, but the master has delivered the goods to the merchant, and the merchant has received them at a place short of the port of destination. Provided only, that such a delay be not rendered ineffectual by the express words of the charter-party. Partial freight is due in the first case, because the cargo is presumed to be divisible; as where, for example, sixty bales are delivered out of an hundred, under which circumstance it is manifest that the freighter has received a proportionate beneficial service, for which he must pay accordingly, and on the other hand have his action against the master, (if the cause of loss admit it,) for the bales undelivered. In the second case, the

partial freight is due, because the master has accepted the goods at a different port from the place of destination.

Cases in which a portion of freight only is due.

Upon the same principle, where by a charter-party freight is payable at so much per ton or bale on delivery of the cargo, and the delivery of part is prevented by an act of the consignee, or by one of the perils excepted against, freight is due for the part delivered. (*r*) In the case referred to in the note it was likewise intimated, that where a ship was freighted on a single voyage outwards, and prevented from delivering her cargo, she would be entitled to recover from the owner of the cargo freight for *bringing it back;* and that the master, upon losing the delivery of a part of the cargo, would not be entitled to cast away the residue.

Of freight *pro ratâ itineris.*

In an earlier case (*s*) it was decided, that freight *pro ratâ itineris* is not recoverable, where the charter-party covenants for the whole voyage; though the freighter, under the necessity of the case, might have received the cargo at a port short of that of delivery. This was an action on a charter-party, by which a ship-owner at Liverpool, (the plaintiff in the action) let his ship to freight to a merchant of that place, and agreed that the master should carry a cargo of salt to Wyburgh, and thence should bring a homeward cargo of deals, the freight to be paid on arrival at Liverpool. The ship carried the cargo of salt to Wyburgh in safety; but as she was on her voyage homeward, with her cargo of deals, she was wrecked upon some part of the coast, a great distance from Liverpool. The cargo was landed at the place of wreck; immediate notice was sent to the freighter, who, thereupon, took the cargo into his possession, and sold it upon the spot. The ship-owners, under these circumstances, demanded a proportionate freight for such part of the voyage from Wyburgh to Liverpool as the ship had performed; but which

(*r*) Christie *v.* Rowe, see *ante.* (*s*) Cook *v.* Jennings, 7 T. R. 381.

Of freight pro ratâ itineris.

the freighter refused, alleging, that no part of the cargo of deals had been delivered at Liverpool, according to the effect of the charter-party. In giving judgment upon this case, Lord Kenyon said, that the charter-party was a deed under seal; and, therefore, must be construed according to its express form and effect. That the agreement was exact and precise; and, therefore, there was no room for implication in favour of the imagined equity and reasonableness of the case. And Ashhurst, J., said, that the freighter was not bound to pay the freight under this agreement; the event, on the happening of which the money was to become due, never having taken place.

The same point was decided by a much earlier case, (*t*) where a merchant had agreed, by charter-party, with a master, to bring his goods to a certain port, for which he was to receive a freight agreed upon. In the course of the voyage the vessel encountered some pirates, by whom she was plundered of part of the goods. The residue she brought safe to port; but the merchant refused to pay the freight for any, because he had not received all. The Court held, that he was not bound to pay any freight, because the whole agreement was not performed, and the whole agreement was the thing contracted for.

It may be observed, in both these cases, that the shipowners brought their action upon the covenant; and, not having performed the condition, they had no claim to the corresponding obligation of the other party in the contract. It is another distinction in these cases, that there were charter-parties; and, of course, that the express stipulation of deeds under seal precluded the admission of any implied contract in favour of a more indulgent interpretation. But if the same circumstances had occurred in a general ship, and the freighter had received his goods, the Court would, doubtless, have assumed such accept-

(*t*) Bright *v.* Cowper, 1 Brown 21.

ance to be evidence of a new contract between the parties, to pay what was reasonable under the particular circumstances of the case. The distinction in these cases, therefore, may be stated to be this:—if a whole voyage, or whole service, be stipulated for in the charter-party, the ship-owner cannot sue on the charter-party, unless the whole voyage, or whole service, be rendered. But if the merchant receive the cargo, the owner may, doubtless, found an action on an agreement implied in such acceptance, subject, however, to the opinion of the Court and jury, whether the circumstances of such acceptance are sufficiently strong to prevail against the positive contract on the charter-party for the whole voyage. The general rule in these cases is, that if the charter-party be positive and express, no implied contracts can be raised in contradiction to it. But an after contract is not necessarily a contrariety; it may be a new obligation for a new service; and it may stand upon its own footing. It should seem, however, that where there is an express contract by deed, covenant, and not *assumpsit*, lies on any promise arising by implication of law out of its terms. (*u*)

Of freight *pro ratâ itineris.*

The general principle of the law merchant upon this point is, that if the ship be driven on shore, it is the duty of the master either to repair it, or to procure another; and, having then performed the voyage, he will be entitled to his freight. If he cannot do this, he must make a new agreement with the freighter, according to the circumstances of the case. If the freight be under charter-party, he will be entitled to nothing, unless by such new agreement. If it be by a general ship, there must likewise be a new agreement; but the Court will imply it of course, if the goods be accepted.

The above principles, taken together with what we have

(*u*) Randal *v.* Lynch, 12 East, 179. Cooke *v.* Jennings, 7 T. R. 381. Smith *v.* Wilson, 8 East. 437, and the cases *post.* But see Christie *v.* Row, 1 Taunt. 300.

Of freight pro ratâ itineris.

had occasion to explain at the commencement of this Chapter, will serve as an illustration of all the cases under the head of freight *pro ratâ itineris*. The cases already adjudged are not numerous; but being most of them single cases, upon single points, they will not admit of being distributed into classes, but must each be discussed and examined under its particular circumstances.

We have said, immediately above, that if a chartered or hired ship suffer shipwreck, but part or the whole of the cargo be saved, it is the duty of the master to provide another vessel, to convey such part or whole of the cargo to its proper port of delivery; and that if he provide such vessel, and complete such carriage; or if, having provided, or offered to provide it, the merchant himself decline to accept such conveyance, the master, having in both these cases performed what the law merchant requires of him, will be entitled to the full freight. This principle was affirmed in a very elaborate appeal case from the Court of Sessions, in Scotland, to the House of Lords. (*x*) The facts of that case, to which we have before referred on another point, were summarily these. The owners of the ship Wharton had let her out to freight to some Glasgow merchants, Grey and others, for a voyage from Glasgow to the West Indies, and thence back to Glasgow with a cargo of tobacco; at freight so much *per* ton payable after the arrival of the vessel. The ship arrived in safety in the West Indies; and there took in 199 hogsheads of tobacco, part of it the property of Grey and Co., and the other part the property of others, which they agreed to bring to make up the loading. In the course of its voyage to Glasgow with this cargo, the vessel was wrecked on the coast of Ireland; but the greater part of its cargo, namely, 163 of the hogsheads of tobacco, were saved. Under these circumstances the owners wrote to Grey and Co., that they would provide another vessel to bring the goods

Lutwidge *v.* Grey.

(*x*) See *ante*, Lutwidge *v.* Grey.

so saved from the place of wreck to Glasgow; but Grey and Co., instead of giving any attention to this notice, immediately abandoned their part of the cargo to the underwriters, with whom they were insured. The owners provided the ship as promised by them; but the proprietors of the other portion of the cargo would not send their portion by it, unless the master consented to sign a new bill of lading. Under these circumstances Grey and Co. refused to pay the freight. The cause was first tried in the Admiralty Court of Scotland, where the judge decided, that the full freight was due from Grey and Co. for the part of the cargo saved, but none for the part lost; and that the full freight was due, although the goods were not carried to Glasgow, because Lutwidge had another ship ready to transport them thither; and there was no occasion for any new bills of lading, while the former bills of lading subsisted. From this judgment Grey and Co. appealed to the Lords of Session, and obtained a reversal, upon which Lutwidge appealed to the House of Lords: there the decree of the Lords of Session was reversed; and it was declared that Grey and others were liable for the full freight of such of the goods as were given up to the insurers, and for the freight *pro ratâ itineris* of such of the goods as were brought to Glasgow, notwithstanding some of the tobacco was found injured. Of freight *pro ratâ itineris.*

The same principle was re-affirmed in another case under Lord Mansfield. (*y*) Luke, a ship-owner at Newfoundland, let a part of his vessel to a merchant of the name of Lyde, for the shipment of 1500 quintals of fish from Newfoundland to Lisbon, the freight to be at two shillings *per* quintal. The voyage from Newfoundland to Lisbon is an average of twenty-one days; but when the ship had proceeded seventeen days, she was taken by a French ship, within four days' sail of Lisbon. She was almost immediately afterwards retaken by an English privateer, and Luke *v.* Lyde.

(*y*) Luke *v.* Lyde, 2 Burr. 882. 1 Black. Rep. 190.

Of freight *pro ratâ itineris.*

carried to a small port in England. Luke, the owner, immediately abandoned the ship to the insurers; but Lyde took his goods of the captors, paying a salvage of five shillings *per* quintal, (being half the prime cost of the cargo.) Under these circumstances Lyde made no demand upon the owner to provide another vessel; but, being of opinion that he could sell the goods to more advantage at Bilboa, in Spain, than at Lisbon, he took them himself there; but, finding a bad market, was obliged to dispose of them at five shillings *per* quintal. In an action for freight, brought by Luke, the owner, under an assumpsit implied by the acceptance of the goods, the Court decided, that he should recover freight for half the quantity of the cargo shipped, (considering the other half to be absolutely lost by the expense of salvage,) and in the proportion of seventeen days, during which the ship had proceeded on the voyage, to twenty-one days, within which the voyage would have been completed, if the capture had not happened; that is, 60*l.* 14*s.* being seventeen out of twenty-one parts of 75*l.*, the half of 150*l.* And Lord Mansfield said, "if a freighted ship becomes accidentally disabled on its voyage, without the fault of the master, the master has his option of two things; either to refit it, (if that can be done within convenient time,) or to hire another ship to carry the goods to the port of delivery. If the merchant disagree to this, and will not let him do so, the master will be entitled, under the usual charter-party, to the *whole* freight of the *full* voyage; and so it was determined in the House of Lords, in the case of Lutwidge *v.* Grey."

Baillie *v.* Mondigliani.

If a ship be wrongfully seized and sold, and restitution in value be awarded against the captors, the owners will be entitled to freight, *pro ratâ itineris,* of the voyage performed at the time of capture. (*z*) If the ship sink, or be taken, the freight is sunk or taken with it. But, if the

(*z*) Baillie *v.* Mondigliani, Park. Chap. ii. p. 70. The Copenhagen, Mening, 1 Rob. A. R. 289.

ship be retaken, the freight, as before said, revives in the re-capture. No freight will be due where the voyage is prevented upon its immediate commencement, without the act of the freighter; as where a vessel was chartered to take a cargo to Venice, but immediately upon leaving port was obliged to return by bad weather, and was stopped by an embargo; in consequence of which, the cargo was landed, and re-delivered to the freighter. (a)

The Isabella Jacobina, Sovergren.

Principle upon which the cases of freight *pro ratâ itineris* are founded.

The reader will perceive, by a general review of the above cases, that the subject of freight, *pro ratâ itineris*, is one of the most complicate in the Law Merchant of England; that many of the cases appear to proceed upon mere arbitrary distinctions, and to be little more than the artificial reasoning of the judge in favour of the real or apparent equity of the case. So far as the law may be regarded as certain, the principle of payment *pro ratâ* may perhaps be thus summarily expressed:—If a ship be hired to perform a certain voyage, or to render a certain service, and be prevented by wreck or otherwise from the performance of the *whole* of such voyage or service, the master is entitled to no freight, because he has not completed the condition of it. If the ship be wrecked, and the cargo saved, it is the duty of the master to provide another vessel, and send it to its proper port of delivery. If he do not, or cannot, provide this vessel, he does not perform the voyage or service for which he was hired; and therefore loses his freight *pro ratâ*, upon the same principle as he would lose it if his ship were altogether sunk; namely, by his misfortune in not being able to accomplish the venture. But the merchant may, of course, if he please, dispense with this duty of the master to send forward the cargo by another ship. This dispensation must be either by express or implied agreement. It is unnecessary to say any thing of express agreements of this kind, as they speak for themselves. As respects implied

(a) The Isabella Jacobina, Sovergren, 4 Rob. A. R. 77.

Principle upon which the cases of freight *pro ratâ itineris* are founded.

contracts, the Court will presume them under all those circumstances in which they are reasonable inferences from the act of the merchant upon the occasion. For example, in Luke's case above mentioned, Lord Mansfield manifestly presumed an implied contract of this kind, from the circumstance of Lyde taking the cargo saved into his own possession, and sending it to a different port from that of its original destination, without any demand on the master to send it forward by another ship. The same principle will be found to pervade all the cases; namely, that the master cannot recover upon the original contract, which he has not performed, but must sue, if at all, upon some new contract, implied or expressed; expressed where the merchant directly waives the prosecution of the voyage; or implied, where he accepts the goods, as if he took them *as a part of the beneficial service performed, though not the whole.*

Freight *pro ratâ itineris.*

This latter limitation is important, because, if he accept them only from the necessity of the case, under such circumstances he will only take up his own goods; and the Court will not be able to imply a contract, that, by such an acceptance, he had any intention to waive the completion of the whole agreement. As this is the principle and its limitation, and as we think it will be best understood by leaving it without further comment; we abstain from confirming it by an accumulation of further cases. So far as we have examined them, they all proceed upon the above principle, and its limitation. (*b*)

(*b*) In Cooke *v.* Jennings, 7 T. R. 381, before cited, Mr. Justice LAWRENCE thus expresses himself upon the point which we have discussed: "When a ship is driven on shore, it is the duty of the master either to repair his ship, or to procure another; and having performed the voyage, he is then entitled to his freight; but he is not entitled to the whole freight unless he perform the whole voyage, except in cases where the owner of the goods prevents him; nor *is he entitled pro ratâ, unless under a new agreement.* Perhaps the subsequent receipt of these goods by the defendant might have been evidence of a new con-

Hunter *v.* Prinsep.

It may not, however, be wholly without use, to run cursorily over one or two of the more recent cases: the Young Nicholas is one of this kind. This ship (*c*) was hired to fetch a cargo of mahogany from Honduras to London. The ship arrived at Honduras, took in her cargo, and sailed on the voyage home; but was first driven back by a gale of wind, upon which occasion the master sold part of her cargo for her repairs. She was afterwards taken, retaken, and finally wrecked, (but her cargo saved) upon which last occurrence the master sold the cargo, and remitted the proceeds to his owners. Upon the latter retaining the money for freight *pro ratâ*, the merchant sued them to recover it. The Court held that the owners were entitled to no freight; and Lord Ellenborough, in his judgment, affirmed those principles and distinctions which we have above endeavoured to explain. His Lordship said, "The principles which appear to govern the present action are these:—the ship-owners undertake that they will carry the goods to the place of destination, unless

tract between the parties; but here the plaintiff has resorted to the original agreement, under which the defendant only engaged to pay in the event of the ship's arrival at Liverpool. That event has not happened, and therefore the plaintiff cannot recover in this form of action."

See likewise Muloy *v.* Backer, 5 E. R. 316. In this case the plaintiff contracted to carry the defendant, his family and luggage, from Demerara to Flushing; and in the course of the voyage, within four days' sail of Flushing, the ship was captured by an English ship of war, and brought into England, and the ship and cargo libelled for prize in the Court of Admiralty; the cargo was condemned, and proceedings still pending against the ship; but the defendant and his family were liberated, and their luggage in fact restored to their possession. The Court of King's Bench decided, that however the question might be as to the plaintiff's right to recover passage-money upon an implied *assumpsit pro ratâ itineris*, if the ship were restored; yet, pending the proceedings against the ship, as prize in the Admiralty Court, no such action could be maintained; for *non constat*, but that the ship might be condemned, and the freight decreed to the captors.

(*c*) Hunter *v.* Prinsep, 10 East. 378. See *ante*, where this case is cited on other points.

Of freight pro ratâ itineris.

prevented by the dangers of the seas, or other unavoidable casualties; and the freighter undertakes that if the goods be delivered at the place of their destination, he will pay the stipulated freight; but it was only in that event, namely, of their delivery at the place of destination, that he, the freighter, engages to pay any thing. If the ship be disabled from completing her voyage, the ship-owner may still entitle himself to the whole freight, by forwarding the goods by some other means to the place of destination; but he has *no right to any freight if they be not so forwarded, unless the forwarding them be dispensed with, or unless there be some new bargain upon this subject.* If the ship-owner will not forward them, the freighter is entitled to them without paying any thing. One party, therefore, if he forward them, or be prevented or discharged from so doing, is entitled to his whole freight; and the other, if there be a refusal to forward them, is entitled to have them without paying any freight at all. The general property in the goods is in the freighter; the ship-owner has no right to withhold the possession from him, unless he has either earned his freight, or is going on to earn it. If no freight be earned, and he decline proceeding to earn any, the freighter has a right to the possession. The captain's conduct in selling the goods was, in effect, declining to proceed to earn any freight; and therefore entitled the plaintiff to the entire produce of his goods, without any allowance for freight."

Liddard *v.* Lopes.

In two other cases, still more recent, the decision was upon the same principle. In one of these (*d*) a ship was hired to carry a cargo of coals from Shields to Lisbon; the freight to be paid on the right delivery of the cargo. The ship accordingly sailed to some distant port of the English coast for convoy: she was detained there for some time by contrary winds, in the course of which detention the master learned that the ports of Portugal were shut

(*d*) Liddard *v.* Lopes and Another, 10 East. 526. cited before on other points.

by the invasion of the French. Upon this information he wrote to the freighters that he should land the coals; to which they replied, that they would not consent, if they were to be called upon for freight and expenses. The master, however, subsequently landed the cargo contrary to this notice; and the cargo, under all these disadvantages, having been beneficially sold upon the spot, (*e*) the owners sued for a compensation *pro ratâ* of the voyage performed. But the Court held that no freight was due, the voyage not having been performed, and the merchant not having dispensed with the performance, nor made any new contract by the acceptance of the goods.

Of freight *pro ratâ itineris.*

The second case was that of Osgood *v.* Groning, to which we have before had occasion to refer. In this case the ship was hired for a voyage from Charlestown to some port in Holland, and sailed accordingly; but, under some circumstances of danger from French decrees, the master put into an English port, and declined to pursue the voyage; offering to the agents of the merchants in England the delivery of the cargo upon payment of freight, but which the agents declined, and insisted upon the completion of the voyage. The case coming before a Court of law by direction of the Chancellor, it was decided that the master had no claim to freight, the voyage not having been completed, and there having been no new contract implied in an acceptance. (*f*)

Osgood *v.* Groning.

Thus, therefore, the general rule of payment *pro ratâ* is briefly this:—If the voyage be not performed, the goods must be accepted, and accepted in a manner and under circumstances from which the law will infer an intention, or common reason recognise a strong equity, for paying the compensation for the partial *benefit* received.

The Courts of Admiralty, where the question of freight

(*e*) It was sold by the consent of the owners, *without prejudice.*

(*f*) 2 Campb. 466.

Of freight *pro ratâ itineris.*

comes collaterally before them in the case of captured ships ordered to be restored, will exercise a larger equity than belongs to a court of law. They do not, indeed, assume to make a new contract for the parties; but presume their consent to such a contract as equitably belongs to a new state of things not originally within their contemplation. Accordingly, where a ship, having been captured at the very mouth of the port to which she was destined, was afterwards re-taken and sold for salvage, but the ship and cargo, upon a suit in the Admiralty, were ordered to be restored; the Court directed a moiety of the freight to be paid; though the merchant insisted that none was due because the whole voyage had not been performed; whilst the owner claimed the whole freight, because he had reached the mouth of the river. (*g*)

In the Copenhagen, a very complicate question of freight on the trans-shipment of prize goods, between the ship, the cargo, and the trans-shippers, arose before Sir William Scott. The ship having put into a British port in distress, and wanting repairs, it was found necessary to trans-ship and send the cargo in other vessels on its destination. The expenses of trans-shipping and unloading the goods, for the purpose of repairing the ship, and for the preservation of the cargo, were considered by that learned Judge as a general average; and freight *pro ratâ only* was decreed to the original ship, the hire of the subsequent vessels being a charge upon the cargo, and the ship having to pay her own repairs. (*h*) But the same learned Judge pronounced the whole freight to be due between a British ship and cargo; both being restored; where the ship had been re-taken from the enemy, on a voyage from Lisbon to Ireland, and carried into Falmouth; although she did not carry the cargo beyond Falmouth, the ship being claimed and restored, before the

The Racehorse.

(*g*) The Friends, 1 Edw. Ad. Rep. 246.

(*h*) Copenhagen, Mening. 1 Rob. 289.

cargo, which was litigated, and no restitution awarded till many months after the liberation of the ship.

Of freight *pro ratâ itineris.*

In this case, (*i*) it is to be observed, that the whole of the outward voyage was performed, and a great part of the return voyage; and the same expense and labour incurred as if the ship had gone to the place of her destination. It is another circumstance in this case, that the ship was set at liberty before the cargo was claimed; and it was not in the power of the person concerned for the ship (who was but an administrator for the insolvent estate of the owner) to make a new contract. He went to Falmouth, and found the ship unladen; and no application was made to him to carry on the cargo: he was not bound, therefore, to wait an indefinite time.

But the Court have refused to give freight, where the vessel, being captured on the outward voyage, was re-captured, and brought back to the port of her departure. (*j*) And freight was refused to a ship under embargo, against a cargo not under the embargo, but which was obliged to be unloaded to be sent in another vessel. (*k*)

It is a rule in the Admiralty Court, that a captor who *has performed* the contract of the vessel is, as a matter of right, entitled to freight. Although if he have done any thing to the injury of the property, or have been guilty of any misconduct, he may remain answerable for the effect by way of set off. (*l*)

It is the equitable practice of these courts to consider the demand for freight an absolute demand in all cases where the ship is innocently employed; and freight is considered to be a lien prior in equity to all others, and

(*i*) Racehorse, White, 3 Rob. 301.

(*j*) Hiram, Still. 3 Rob. 180.

(*k*) Werldsborgaren, Lagerholm, 4 Rob. 17, and the Jacobina, 4 Rob. 77. and see *ante*, p. 149.

(*l*) *Ibid*, 282.

Of freight *pro ratâ itineris.*

takes precedence, in ordinary circumstances, of the expences of the captors, where they are decreed to be a charge upon the cargo. Where the cargo, however, is of a perishable nature, and is likely to be inadequate to pay the freight (on restitution of the ship with freight,) the court will sometimes order a partial sale of the cargo for discharging it. But it is a rule from which the Court never departs, unless in cases where very peculiar circumstances introduce their own exceptions, that if goods are not carried to their original destination within the intention of the contracting parties, freight *shall not be due*. On the other hand, when the contract is specifically executed in the terms of the charter-party, by bringing the cargo to the place of destination, or where the destination is virtually completed, the captors shall be entitled to freight. (*l*) And the court has in many instances refused freight to captors, on a suggestion of a beneficial and privileged sale in this country; under the general rule, excluding freight where the goods are not brought to the port of destination, though a very large portion of the voyage may have been performed. (*m*)

In this court it has nevertheless been holden (though a departure from the general law merchant) that where neutral and innocent masters of vessels are brought into any of the ports of Great Britain, on account of their cargoes, and obliged to unlade them, they shall have their freight; upon the principle that the non-execution of the contract arising from the incapacity of the cargo to proceed ought not to operate to the disadvantage of the ship. (*n*)

Although no freight is due, where by sale of the goods the voyage has been totally defeated, (*o*) nevertheless,

(*l*) 5 Rob. 71.

(*m*) Vrow Anna Catherina, Mahts, 6 Rob. 269, and 271.

(*n*) Edw. Adm. Rep. 76.

(*o*) Louisa, Higginbotham, Dod. 317.

when the master, by most imperious necessity, was compelled to sell a part of the cargo, and there was a total absence of all fraud, but the expences were incurred by the default of the owners of the cargo, the court allowed full freight on the entire cargo. (*p*)

Of freight *pro ratâ itineris.*

In the first part of this Chapter we have endeavoured to explain a distinction between such voyages and services as are *entire* by their nature, and in which, of course, there is no performance, unless the whole be performed, and such voyages or services as are in their nature divisible. This distinction becomes of much practical importance in voyages which are apparently divided into parts, such as an outward and an homeward voyage; or a voyage through a series of successive ports. In this kind of voyages the freight is due or not, accordingly as the service is distinct or entire, or as the terms of the charter-party will allow it to be so considered. The owner of the ship Richard (*q*) let his ship to freight by a charter-party for a voyage from London to Granada, and thence back to London, at so much freight *per* month for such time as she should occupy in the voyage; and, moreover, covenanted that the ship might load and unload all lawful goods during such *outward* and *homeward* voyage. The freighter was to pay the amount of the freight on the discharge of the homeward cargo in London. The master took the outward cargo in safety to Granada, and there took in another for home, but was lost in such homeward voyage. The owner, under these circumstances, claimed the freight for the outward voyage; but which the merchant refused to pay him, alleging, that nothing was due, as the whole service had not been performed. But the court held that such outward freight was due, the charter-party having recognized an outward and homeward voyage, and made them two distinct services; and one of them being per-

Mackrell *v.* Simond.

(*p*) Angerona, Marks, Dod. 385.

(*q*) Mackrell *v.* Simond and Hankey, Abbott, 345.

Of freight *pro ratâ itineris.*

formed, the freight was due for it. (*r*) Here, therefore, the decision proceeded entirely upon the opinion of the court on the terms of the charter-party, or rather upon the equity of the case in the first instance, and then a comparison of such equitable conclusion with the terms of the charter-party, and the finding a possible conformity of the one with the other.

In another case, before Lord Kenyon the ship was let to freight for a voyage from Liverpool to Madeira, thence to Barbadoes, and thence back to Liverpool, at which last place, in the terms of the charter-party, she was *to end the said intended voyage.* The ship performed her voyage in safety to Madeira, and delivered the cargo consigned there; but was captured in the voyage between Madeira and Barbadoes. Under these circumstances, the owner sought to recover freight for the voyage to Madeira; but the court held that none was due, the voyage being, in the terms of the charter-party, *entire*, and the freight not becoming due till her arrival at Liverpool. (*s*)

In both of these cases the freight was at so much *per* month for the duration of the voyage; but the court considered this only as a measure of the service, and in no degree an alteration of the nature of freight. (*t*) And in a case before referred to, (*u*) Lord Mansfield, in speaking of the nature of freight, said, that as freight was the mother of wages, so the safety of the ship was the mother of freight. The case of Smith *v.* Wilson, (*v*) was decided upon the same principle. The ship was hired for a voyage to Monte Video, and back to London, (in the terms of the charter-party expressed as one entire voyage,) at so much *per* month freight. The ship sailed, but was seized off the

Smith *v.* Wilson.

(*r*) Mackrell *v.* Simond and Hankey, Abbott, 345. and see Gibbon *v.* Mendez, *ante.*

(*s*) Byrne *v* Pattinson, Abbott 347. *et sequenter.*

(*t*) Byrne and Others, *v.* Pattinson, *apud eundem.*

(*u*) The ship Richard, Mackrell *v.* Simond, *ante.*

(*v*) 8 East. 137.

coast of Africa, on suspicion of illicit trade, and sent back to London. After some delay in recovering his ship, and repairing it, the owner informed the freighters that he was willing to resume the voyage, and to complete his engagement. But the freighters declined this offer, and abandoned the charter-party, upon which the owner brought his action upon the covenant for the freight, as if he had earned it. But the Court held, that under *the charter-party* nothing was due, as the voyage was not performed.

Of freight *pro ratâ itineris.*

Upon the above principles in the common law and admiralty courts, rests the law of freight *pro rata;* and, upon a view of the whole, it may be summarily stated, that under a charter-party it is scarcely ever due; unless, first, either the voyage be performed; or, secondly, unless there be a distinct mention in such charter-party of an outward and homeward voyage, separately considered; or, thirdly, unless there be an express or implied waivure of sending the goods forward and completing the voyage, as in the case of wreck before reaching port.

Of passage-money.

Money due for passage is of the same nature as freight; and must, therefore, be touched upon in this place. Thus, if a passage be taken in the ordinary way, from one port to another, the money to be paid, or understood to be paid, upon arrival; such passage-money will stand upon the same nature as freight; and will not be recoverable, unless the vessel complete the whole voyage, and arrive safely. But in a case before Gibbs, C. J., (*w*) a passage had been taken on board a ship from London to the West Indies, the passage-money to be paid in London before the commencement of the voyage. The passenger put his baggage on board, in the Thames, intending himself to embark at Portsmouth. The ship was lost in going round to that place, upon which an action was brought against the owners to recover the passage-money. But Gibbs, C. J.,

(*w*) Gillan *v.* Simpkin, 4 Camph. 241. and see Muloy *v.* Backer, 5 E. R. 316. and *ante.* p. 151. *n.*

held that the money was not recoverable. If the money were payable at the end of the voyage, the owners, of course, would have had no claim to it, there being an entire contract to carry the plaintiff from London to Antigua. But the agreement, in this case, being, that the passage-money should be paid previously, the passenger and captain were fellow-sharers in the perils of the sea, and both must abide by their loss.

Of freight by the custom of trade and the usage of particular places.

The demand for freight, like every other duty, may be occasionally qualified by the customs of particular places, by the usages of trade, and by some particular understanding of the parties at the time under some alleged personal privilege; provided, only, that such usages, or privileges, be not contrary to express law, manifest equity, and common reason. And, therefore, where a vessel brought a cargo of skins from Monte Video, and the freighter claimed an exemption of freight for the outside skins of the several packages; Lord Ellenborough held the claim to be absurd, such outside skins occupying a space in the hold of the ship, and being actually a part of the commodity imported. (*x*)

In another case, which we have had occasion to mention in a former part of our treatise, (*y*) it was agreed, between the freighters and the captain, that the latter should have a sum certain in lieu of privilege. The captain insisted, upon the ground of a general understanding between captains and owners, that such agreement against privilege did not exclude him from the right of letting his cabin for goods or passengers. The Court seemed inclined to admit the claim upon due proof of the usage; but the case was determined upon another point, namely, upon the express agreement of the freighter that this privilege should be reserved. It is, however, an universal rule of law, that a

(*x*) Moorsom *v.* Page, 4 Campb. 103.

(*y*) Birch *v.* Depeyster, 4 Camp. 365. and see *ante*.

custom may be excluded by an express contract excepting it.

Of the parties entitled to freight, &c.

Thirdly, as to the parties entitled to freight, and by whom freight is payable.

The vendee, to whom a chartered ship is sold *before* the voyage, and not the vendor, or one to whom he afterwards assigns the charter-party, is entitled to the freight. (z) But where the ship has been sold *during* the voyage, the owner, with whom a covenant to pay freight has been made, will be entitled to the freight, and not the vendee.(a) A mortgagee, who does not take possession, is not entitled to freight. (b)

By whom the action must be brought.

With respect to the action for freight, and by whom it may be brought, we have before shewn, in the Chapter on Charter-parties, that the action must, in general, be brought by and against the person with whom the contract is made. If there be a contract of charter-party under seal, the parties to the deed must sue and be sued. But if the contract be not under seal, and made with the master, the action may be brought either in the name of the master or the ship-owner. But where a contract under seal was made by the captain with the freighters on behalf of his owners, it has been decided, that the owners cannot maintain assumpsit against them for freight; for the charter-party is conclusive, and the implied promise is merged in the specialty. (c) If, indeed, there be a promise independently of the charter-party, an action may, in certain circumstances, be sustained, notwithstanding its existence; as in a case before cited. (d) The plaintiffs, having contracted by charter-party, under seal, to let a ship, then in the Thames, to freight for eight months, from the day of

(z) Morrison *v.* Parsons, 2 Taunt. 407.

(a) Spildt *v.* Bowles, 10 East. 279.

(b) Chinnery *v.* Blackburne, 1 H. B. 117. *n.* And see the cases with respect to the obligations of a mortgagee, *ante*, Vol. I. p. 350.

(c) Shack *v.* Anthony, 1 M. and S. 571.

(d) White *v.* Parkin, 12 East. 578. and *ante*, p. 31.

Of the parties entitled to freight, &c.

her sailing from Gravesend; and that she should sail from the Thames to any British port in the channel, to lade goods and proceed to the West Indies, &c.; afterwards agreed by parol, that the ship should lade in the Thames, and that freight should commence from her entry outwards at the custom-house: the Court held the parol contract to be distinct from, and not inconsistent with that by deed, and might be enforced by action of assumpsit.

The payment of freight is usually made an express condition of the delivery of the goods in charter-parties and bills of lading, and of course the master has a right to withhold the delivery till the freight be paid. If the master parted with the cargo without the payment of freight, and thus gave up his lien, it was doubted, in some of the earlier cases, whether he might resort back to the merchant charterer. But as a lien is only in the nature of a security, and as the express contract is always with the first employer, there certainly seemed no sufficient grounds for this doubt; and, accordingly, in several successive cases, (*e*) it has been holden, that a lien is only in the nature of a second or additional remedy, and that the master may always have his action upon the contract against the merchant-charterer or freighter. In Christy *v.* Row, the master had signed a bill of lading by which he agreed to deliver the goods to the consignee or his assigns, he or they paying freight for the same. Under some particular circumstance of the voyage, the master made delivery of the cargo to the consignee, without a demand of the freight. The Court held, that this was no discharge to the consignor. The principle of these decisions is, indeed, obvious. It is manifest, from the nature and circumstance of bills of lading and charter-parties, that this condition of the payment of freight by consignees is inserted as a

Christy *v.* Row.

(*e*) Penrose and others *v.* Wilks, Sitt. after Hil. Term. 1790. Owenson *v.* Morse, 7 T. R. 64. Tapley *v.* Martius, 8 Ter. Rep. in B. R. 451. Christy *v.* Row, 1 Taunt. 300. Sheppard *v.* De Bernales, 13 East. 565. Everett *v.* Collins, 2 Campb. 515. Marsh *v.* Pedder, 4 Campb. 257,

benefit and advantage only to the owner or master; and is in no degree intended, or understood, by either, as a substitution of the consignee for the consignor as the party contracting to pay the carrier. Indeed, as the master has always a ready means in his hands of enforcing the payment of freight, and as, in general cases, he can only part with his lien on the cargo for the benefit of the freighter, it would be contrary to all mercantile interest, as well as to equity, if he should lose his remedy in consequence of his conscientious conduct. In the above case, Christy *v.* Row, the master had taken an indorsement on the charter-party, requesting the consignee to pay the freight; and, in confidence that he would do so, had delivered the cargo. The consignee afterwards refused payment, and the master did not give immediate notice to the freighter of such non-payment; but the Court held, that none of these circumstances discharged the consignor. In Sheppard *v.* De Bernales, where the same point came again before the Court, Lord Ellenborough, in delivering the judgment of the Court, stated the question to be, "whether this clause was introduced for the merchant's security, and made it incumbent on the master, at his peril, to look to the consignee under the bill of lading for payment of the freight, in which case he would have no right to deliver the goods to the merchant's agent without first receiving the freight; and a delivery without payment of it would not be a right and true delivery: or, whether it was introduced for the master's benefit only, and merely to give him the option, if he should think fit, to insist upon receiving the freight abroad, before he would deliver the goods; in which case he might waive the benefit of this provision in his favour, and might deliver them without first receiving payment, and would not be thereby precluded from having resort to the merchant afterwards." The Court held the latter to be the true construction of the contract.

Of the payment of freight.

Sheppard *v.* De Bernales.

But though the consignor is thus generally the person from whom the freight is always demandable, being the

Where the consignee is

liable to the payment of the freight.

person by whom the goods are sent, and the first contractor with the ship-owner or carrier, it is still manifest that the consignee may likewise invest himself with the obligation, and may expressly, or by legal and equitable implication, adopt the contract to pay the freight. The distinction is, that where the consignee is the mere agent of the consignor, and has no interest nor property in the goods, in this case he is not liable to the payment of the freight; the delivery of the goods to him, under such circumstances, being equivalent only to the common case of leaving a bale or parcel with some friend or correspondent of the sender, either by his direction, or in his absence. But if the goods have become the property of the consignee, there, as he reaps the fruit of the service, he shall pay the freight. In accepting the bill of lading, he adopts the contract with the ship-owner. Thus, if the bill of lading express in the ordinary terms that the goods are to be delivered to the freighter or his assigns, he or they paying the freight for the same, and such bill of lading be indorsed to a second person, and thence to a third; such third indorsee, on receiving the goods, will be liable for the freight; for such a bill of lading contains a notice on the face of it, that this is the condition of the delivery; and the indorsee having accepted such indorsement, he, of course, has assented upon his part to the contract. He takes the goods with that condition and qualification.

All the cases proceed upon these distinctions; namely, whether the consignee be the mere agent and instrument of deposit for the consignor; or whether he be himself the claimant and purchaser of the goods, or indorsee under the bill of lading. In Ward *v.* Felton (*f*) the agent received the goods merely as the friend of the freighter upon the spot; the ship having been stranded, and the agent having previously received a letter from his principal, requesting him, under all circumstances, to do the best for the cargo. The agent received the cargo; and further entered it in

(*f*) 1 East. 507.

his own name in the custom-house, but declared, throughout the proceeding, that he had himself no interest in the cargo, but only acted as agent for another. Under these circumstances the Court held he was not liable. But in Cock *v.* Taylor, a leading case under the liability of consignees for freight, the defendant had received the goods as the third indorsee of a bill of lading in the usual terms, "that the goods were deliverable to the shipper, or his assigns, he or they paying the freight." In this case it was contended, that Taylor, the defendant, was the mere purchaser of the goods from the first consignees, and could not be liable in an action of freight, there being no contract, express or implied, between them and the ship-owners. But Lord Ellenborough held, both upon the trial at Nisi Prius, and afterwards upon the occasion of a rule for a new trial being moved for in the King's Bench, that though there were no original privity of contract between these parties for payment of the freight; yet the taking of the goods from the ship by the purchaser under the bill of lading was evidence of a new agreement by him, as the ultimate appointee of the shippers for the purpose of delivery, to pay the freight due for the carriage of such goods, the delivery of which was only stipulated with the shippers to be made to the consignees named in the bill, or their *assignee, he or they paying freight for the said goods.*

Of the payment of freight.

Cock *v.* Taylor.

In Bell and Kymer, to which we have frequently had occasion to refer, the bill of lading was indorsed to Kymer merely as a broker, who had advanced money on it, and who, after repaying his own advances, paid over the balance to his principal without payment of the freight. In an action for the freight, Kymer was holden to be answerable, both as indorsee of the bill of lading, and as something more than a mere agent to receive; namely, as an agent with an interest. (g)

(g) 1 Marsh. 146 And see Cock *v.* Taylor, 13 East. 399, and *ante*, *p.* 8.

Of the payment of freight.

In a later case, (*h*) of which the circumstances were very peculiar, the judgment of the Court of King's Bench appears, at first view, to be in some degree repugnant with these principles; but if the circumstances be attentively considered, it will appear that the distinction was well warranted by the manifest understanding of all the parties in the case, and still more particularly by the concurrent existence of the same covenant in the charter-party with the consignor, the bill of lading to the consignees, and, therein, the legal preference of the more solemn deed. The case was briefly as follows:—The owners of the ship Lavinia, ship-owners in London, had let their vessel by a charter-party to Greaves and Co., in which it was covenanted that the vessel should proceed frem London to St. Domingo; and, there taking in a cargo of coffee, should convey it to London, upon arrival at which last port the freight should be paid by approved bills, payable ten weeks after date. The vessel, accordingly, proceeded upon the voyage; and having shipped the coffees at St. Domingo, the master there signed a bill of lading, stating them to be shipped on account and risk of Greaves and Co., or their assigns, he or they paying freight for the said goods, as *per* charter-party, with primage and average accustomed. The ship, with her homeward cargo, arrived at London; and was reported, and entered the West India Docks in June, 1810. Before any part of the cargo was discharged, bills of lading for the coffees were indorsed, (for a valuable consideration) by Greaves and Co. to third persons, the defendants in the action; and, by virtue of these indorsed bills of lading, the coffees were entered in the books of the West India Dock Company, in the names of the defendants, and were afterwards delivered out to their order. On the 14th of July Greaves and Co. stopped payment; and about two months afterwards the defendants, (being considered as personally liable, as having entered the goods under the above circumstances,) were called upon

Moorsom *v.* Kymer.

(*h*) Moorsom *v.* Kymer, 2 M. and S. 303.

to settle the freight as stipulated in the charter-party. Upon the argument in the King's Bench, the court unanimously held that, under the above circumstances, the owners could not recover the freight of the indorsees; a special and exclusive credit having been given by the owners to Greaves and Co. under the charter-party, and there being manifestly no thought of resorting to the indorsees till the bankruptcy of Greaves and Co.

Of the payment of freight.

The principle and distinction in this case may be briefly explained; and, upon a little consideration, will become intelligible. The consignee or indorsee can only become liable either by an express or implied contract. But an express contract was not pretended in the above case; and the rule of law is, that the Courts will not raise an implied promise in a third party, where there is an express agreement, and more particularly a deed under seal, between the original contractors. In a word, there was no privity of contract,—no understanding on the part of the owners that they gave credit to the indorsees for the freight, nor any knowledge or consent of the indorsees that they received the cargo under this condition. The matter, therefore, stood upon their bare receipt and acceptance of the cargo; and this was not sufficient to raise an implied assumpsit, where the goods, being delivered from a chartered ship, were not delivered under circumstances compelling a presumption upon the receivers that the captain looked to them for the freight; but where, on the other hand, the circumstances were such as to justify the inference that the freight was either actually paid, or that goods being brought in a vessel hired by the shipper, the freight was exclusively to be paid for by him.

But where the consignees of a West India cargo delivered the bill of lading to their broker, and received advances upon it, and the broker, upon the arrival of the cargo, had it entered in his own name in the custom-house, and afterward received the goods, it was holden by

Of the payment of freight.

the Court of King's Bench, that the mere circumstance of his receiving the goods *as broker*, or as having advanced money upon them, would not justify the presumption of an assumpsit that he should pay for the freight; but that, as he had always paid the freight of goods in his usual way of dealing under similar circumstances of receiving them, such habit of dealing was sufficient to support an implied promise to pay the freight. (*k*) Where the consignee, who is to pay the freight on delivery of the goods, gives a bill for the amount, which is afterwards dishonoured, or any other unavailable security, the master may, notwithstanding, sue the freighter. Thus, where A., wishing to send goods to B., at X., employed C. to carry and deliver them to B., and engaged to pay C. for the freight, and C., on delivering them according to order, took a bill of exchange from B., drawn on A., which bill was never paid, it was held that A. was liable to pay the amount of the freight to C., notwithstanding the bill of exchange. (*l*) So, likewise, in an action of covenant upon a charter-party for freight, it was held no defence that the plaintiff received part of the freight in money from the defendant's agent abroad, and the residue in a bill (without the privity of the defendants,) drawn by the agent, and accepted by certain merchants in London, and which bill was afterward dishonoured; but that the defendants were still bound to pay the freight which remained due; and such bill was not to be deemed payment, although the defendants were not informed of the transaction until after the failure of the parties to it. (*m*) In this case, GIBBS, C. J., says, "The question is, Are the defendants liable at law for the freight? The plaintiff covenants to deliver the goods according to the charter-party; the defendants covenant that they will, by themselves or assigns, pay freight. If the defendants themselves had

(*k*) Wilson *v.* Kymer, 1 M. & S. 157.

(*l*) Tapley *v.* Marteus, 7 T. R. 451.

(*m*) Marsh *v.* Pedder, Holt's N. P. 72.

paid part by bill, and that bill was dishonoured, unless there had been proof that the plaintiff took it in full satisfaction, it would not have been payment. It is the same when payment is made through an agent, and part is paid in money, and part by a bill which is protested. The defendants will remain liable to so much of the freight as is not paid. Circumstances may vary this case. If, when money is offered, the plaintiff chooses, for his own accommodation, to take a bill, there would be some weight in the argument. It is not stated that the plaintiff knew that the agent was to pay him in cash. It is not to be inferred that the agent was so to pay him. The defendants, therefore, are liable for so much of the freight as remains due."

Of the payment of freight.

Fourthly, As to the lien for freight.

Of lien for freight.

Ships being articles of great value, and the freights amounting to large considerations, the courts of law have always expressed a disposition to favour the right of lien for freight, whether under charter-parties or bills of lading; and have, accordingly, been very reluctant in admitting such doctrine of constructive possession in the charterers even of a whole ship, as under strict rules of law would divest the owner of the right of lien. Upon this principle the Courts, in a series of decisions, have taken a distinction between those cases where the *ship itself* is let out, and those where the mere carriage, or *space* of the ship, is let out. (n) In cases of the first kind, the vehicle itself is let. In cases of the latter description, (if we suppose the ship for the sake of illustration, to be a vehicle for the conveyance of passengers,) the *places* only would be let. In the first cases, therefore, the possession of the ship is clearly parted with, and belongs to the freighter; and in such case there being no possession reserved to the owner, there is no footing or foundation for the right or exercise of lien for freight. But where the carriage

(n) See *ante*, Chapter on Charter-parties.

Of lien for freight.

or space of the ship is only let out, then the possession remains with the ship-owner; and having an actual possession of the goods, he may, of course, retain them, where necessary, as a lien for freight. Nor will it make any difference, in cases of this latter kind, whether the whole space of the ship, or only part, be let; as, to recur to our former illustration, a person may hire all the places of a public stage-coach, as well as any single seat, and still leave the owner in possession of his vehicle. The terms of the charter-party, or the nature of the service, must determine under which of these contracts the ship is let; and the right of lien will follow the nature of the original agreement.

Vallejo *v.* Wheeler.

In Vallejo *v.* Wheeler, (*o*) which was a question of barratry, the Court of King's Bench decided, that where a ship-owner demises the hull of the ship to the freighter, he constitutes him owner *pro tempore.* In Frazer *v.* Marsh, (*p*) it was holden under the terms of the charter-party, that the hull of the ship was itself let to the freighter; and that, therefore, the possession so completely passed from the registered owners that they were no longer liable for charges and disbursements, as if it were their own vessel. In a previous case, (*q*) where the master of a ship had chartered her to certain freighters in the absence of the owners, and the plaintiff in the action sued the owners for a loss occurring during the existence of the charter-party, Lord Kenyon ruled, that the charterers were the owners of the ship *pro illâ vice,* and that the owners were exonerated. In another case, before Lord Ellenborough, (*r*) for the non-delivery of some oats, it being proved that the registered owner, against whom the action was brought, had let her out to freight as a

(*o*) Cowper 143.

(*p*) 13 East. 238. And see *ante,* Vol. I. p. 356.

(*q*) James *v.* Jones, 3 Esp. 27, and *ante,* Vol. I. p. 356.

(*r*) Mackenzie *v.* Rowe, 2 Campb. 482, and *ante, id. ibid.*

general ship, it was ruled by his Lordship, that the owners, under these circumstances, were not liable. Of lien for freight.

The principal point of practical importance under this head will be, what is the criterion of the two kinds of letting. To this it may be answered, the possession of the ship by means of the master and crew of the owners, taken together with the terms of the charter-party. Both must be taken jointly, as neither is conclusive by itself: for example, the freighter may not only hire the ship, but hire, as it were, the master and crew with it; although, for the sake of commercial convenience, and in conformity with the usage of ship-owners, such master and seamen may continue to be paid by the owners. Indeed, this is the usual practice, and will be found to be a circumstance in almost all the cases of both kinds of letting. The mode of the letting, therefore, can only be ascertained by the terms of the instrument of charter; and what appears, under all the circumstances, to have been the intention of the parties. The much disputed case of Hutton *v.* Bragg (*s*) proceeded entirely upon this principle, it being assumed by the Court, and conceded by the counsel in that case, that the terms of the charter-party amounted to an absolute and unequivocal letting of the hull of the ship; and, therefore, that the possession had so completely passed from the owner, that the latter had no right to retain the cargo in lien; although, by means of his master and crew, it was within his own manual possession. This case is so peculiar in his circumstances, and is, at the same time, so recent, as to deserve an attentive consideration. Hutton *v.* Bragg.

The owner of the ship Neptune (*t*) let her out to a freighter for a voyage from London to the Cape of Good Hope, and thence back to London. The charter-party expressed, that the ship was *let out to freight* for the above-

(*s*) 2 Marsh 339. (*t*) Hutton *v.* Bragg, 2 Mar. 339.

Of lien for freight.

mentioned voyage; but that the master should reserve the cabin for his sole use, and for the usual accommodation of his crew and ship-stores; and that the freight should be paid by bills drawn during the voyage, or upon the return of the vessel home. The ship performed the voyage agreed upon; but, upon her arrival in the Thames, several of the bills drawn during the voyage had been dishonoured, and the freighter was in that state of insolvency that the owner resorted to his alleged right of lien as a security for his freight, and accordingly regained possession of seventy pipes of wine. The freighter having become a bankrupt, his assignees brought an action for the wine. It was alleged, on the part of the assignees, as plaintiffs, that the shipment of goods did not create any lien, where the ship was let, as in this case, for the whole voyage. That the ship was entirely under the control of the freighter, and that such a letting was of the same nature as letting a house or hired room, and that of course the sole possession was in the lessee; that the payment for hire was, in fact, rather rent than freight, and that the ship-owner had at no time any possession of the cargo upon which to exercise his lien. And Gibbs, C. J., was of this opinion; and accordingly decided, that under a charter-party so expressed the freighter, and not the owner, had possession of the vessel; and that there was no lien, because no possession.

Hutton *v.* Bragg.

The Master, &c. of Trinity House, *v.* Clark.

About the time that the case of Hutton *v.* Bragg was discussed in the Court of Common Pleas, another case, in which the same principle, to a certain extent, was involved, came before the Court of King's Bench.(*u*) It was an action for tolls claimed to be due from the defendant, as owner of the ship Britannia. It appeared, at the trial, that the defendant had chartered this ship to the commissioners of the transport service on behalf of the crown; and in the course of her service she had the benefit of the lights, buoys, and beacons, for which the plain-

(*u*) See *ante*, Chapter on Charter-party, p. 42. and 4 M. and S. 288.

tiffs claimed the customary tolls. The question was, whether the defendant, having chartered his ship, was liable to pay any portion of these tolls during the time the vessel was in the service of the Transport Board. The case was turned into a special verdict; and on the part of the defendant it was contended, that the crown, during the period of this ship's employment under the charter-party, was to be considered as the owner of the ship, and that the defendant was not liable to pay the tolls. The Court adopted this construction of the charter-party in delivering judgment. "The charter-party," said Lord Ellenborough, "in substance, grants the ship, and lets it to hire to freight; which are proper words of lease, and would, of themselves, pass the possession. If I hire a stable or coach-house, I have not less the possession, because it might be a breach of the terms of hiring to use either as a shop or warehouse. In this case the purpose calls for possession, as it seems to require such a controul over the ship as can only be had by possession. Against this it is urged, that the use and service only of the ship are parted with; and that the possession and ownership are retained by the conduct and navigation being left to the master and crew, who are the servants of the proprietors of the ship, chosen, fed, and paid by them. We are, however, of opinion that the arguments tending to shew that the possession passed to the crown, during the term and service of the ship, outweigh those which lead to the contrary conclusion. The terms are proper terms of demise; the sum to be paid is in the nature of rent for the use of the chattel. In truth, the supposed reservation of the possession to the master and crew is not exclusive, as is contended for. The occupation of the different habitable parts of the ship is arranged by the terms of the contract, and a place provided for the residence of the agent for the crown. The whole argument appears to rest on a fallacy; the possession, such as it is of the master and crew, is not retained by the proprietors of the ship, to restrain or interfere with the full and free use of the ship, which they

Of lien for freight.

Master, &c. of Trinity House *v.* Clark.

Of lien for freight.

have let to hire for a term, but as subsidiary and subservient to such use. It is not only consistent with the entire ownership and possession of the vessel on the part of the crown, during the period for which it is let, but it is a further means provided to enable the crown fully and beneficially to enjoy the same, by letting at the same time out to the crown the services likewise of those by whom the vessel might be best conducted under the direction of the crown, in the prosecution of the object for which the crown hired it. The vessel, therefore, is not only hired, but along with it the services also of a certain number of persons paid by the proprietors; and these services are necessary to the use of the vessel, which the proprietors have expressly warranted to the crown. It is the same thing as the hire of a waggon and team for a certain term, the proprietor of the waggon stipulating that the waggon should be driven, and the horses taken care of by his own waggoner and boy, whom he was to feed. In such a case it could hardly be made a question that the waggon and team were in the possession of the hirer, during the harvest, or whatever the term might be for which they were hired. This is indeed *idem per idem;* but, as the instance is more familiar, it serves to put the point in a clearer light."

The decision, therefore, in the above cases, proceeded entirely upon the strong terms of the charter-parties, which the Court considered to amount to a conclusive proof that a temporary ownership passed to the hirers of the vessels; and that the hull of the vessels, or, in other words, the ships themselves, were let to the freighters. But as almost all charter-parties are expressed in the same terms, and as the owner has scarcely in any case any other means of retaining and enforcing his lien, except the constructive possession still remaining in him through the master and crew, this judgment of the Court of Common Pleas in Hutton *v.* Bragg excited a very general alarm amongst the shipping interests; and has accordingly been qualified by the cases of Tate *v.* Meek, and Yates *v.* Rail-

ton; (*w*) and still more particularly by a recent decision, in which the Court of King's Bench referred to Hutton *v.* Bragg, as resting only upon a charter-party expressed in stronger terms than usual. (*x*)

Of lien for freight.

Saville *v.* Campion.

The owner of the ship Hero, the defendant in the action, agreed with a freighter, whose assignees were plaintiffs, for an outward cargo, from London to Madras, and thence with a homeward cargo back to London. In the charter-party the owner covenanted that "the ship being tight and substantial, manned with twenty-four men and boys, and properly victualled, his master, or some other person in his stead, should receive and take on board the goods of the freighter in London, and sail to Madeira, and receive and take on board other goods there; that from thence the ship should proceed to Madras and Calcutta, and there the master should deliver the goods, and receive and take on board other goods; and then the ship should proceed to London, and there should deliver the homeward cargo, the latter goods." The owner further agreed, that such passengers as might be required by the freighter should be conveyed in the ship; and that all the cabins, except one, should be for the benefit and at the disposal of the freighter. The freighter agreed to send goods alongside the ship, and to receive them from alongside; and there was a special clause providing that the freighter might appoint a person to go out, and home, as supercargo, and to take upon him the authority of the master in the stowage of the cargo; but not to interfere with his duties in any other manner, without his leave. The freighter having become bankrupt during the voyage, and, of course, the freight not being paid upon the return of the vessel, the owner claimed a lien upon the cargo, and detained it. In an action of detinue against him by the assignees of the freighter, (the latter having stated the

(*w*) These cases are not yet reported; they were both decisions in the Court of Common Pleas.

(*x*) See *ante*, Chapter on Charter-parties, and 2 B. & P. p. 503.

Of lien for freight.

special circumstances in his plea as the ground of detaining the cargo,) the plaintiffs demurred; and the question accordingly came before the Court of King's Bench for argument. All the cases were then discussed in favour of the freighter of the ship being the owner for the voyage; and it was contended that the possession had so entirely passed from the owner, as to divest him of his right of lien. But the Court was of opinion, under the circumstances of the case, that the charter-party contained nothing, either in its language or in its object, which imported that the merchant-charterer was to have possession of the ship; that it was a contract for the *carriage* of goods, and not for the ship itself; and therefore, that the defendant (the ship-owner) was in possession of the vessel and goods, and as such had his right of lien for the freight. ABBOTT,

Saville *v.* Campion.

C. J. in giving judgment, said, "The charter-party, in the case of Hutton and Bragg, was in terms a letting to hire. This does not distinctly appear by the report; but a copy of it was produced, and it was admitted to be so in the argument of the present cause. In the case now before the Court, the charter-party, as has been before observed, contains no such terms; nor does the nature of the service require that the merchant should be considered as temporary owner, in any question between him, or those who represent him and the defendant. Upon this instrument, therefore, and between the parties to this suit, we think the defendant had possession of the ship and goods for the voyage, and a lien on the goods for the stipulated hire of the ship. And our judgment in this case will be conformable to that of the Court of Common Pleas in the case of Tate *v.* Meek, and to the principle upon which the judgment of this Court in the case of Bohtlingk *v.* Inglis (*y*) was founded; and also agreeable to the nature of the contract that a prudent ship-owner would make on such an occasion. For it would certainly be an act of imprudence on the part of a ship-owner to enter into a contract which

(*y*) 3 East. 384.

might have the effect of employing his ship for a long time, and at a great expense to himself without any remuneration, if the person with whom he contracted should happen to fail before the termination of the voyage."

Of lien for freight.

Freight, as we have before said, is a lien on the cargo; and the inclination of courts of law is to support the right of lien to such an extent in all cases, as is not manifestly inconsistent with the contract of the parties. In Bremin *v.* Currant (*z*) it is said that there can be no lien where there is a special agreement, because then the party is personally liable; and in Bacon's Abridgment, (tit. *Trover*) (*a*) it is laid down, "If a person, who would otherwise have a right to detain the personal chattel of another, for the trouble and expense he has been at concerning it, contract to be paid a sum certain for the trouble and expense, he doth thereby waive the right of detaining the chattel." (*b*) This doctrine is not, however, applicable to all cases; and has been very much relaxed by modern practice. It must be limited to such cases only in which the exercise of the right of lien is excluded—if not by the terms, at least by the manifest implication of the agreement. Generally speaking, where there is a fixed credit, or an agreement to pay by bills, such agreement takes away the right of lien. So likewise, if the custom of a particular trade introduce into the contract a particular credit, although such custom be not expressed in the contract, the right of lien will not attach. Lien, in truth, applies to such cases only where the person claiming to exercise it has a right to demand a ready-money payment: but, if bills should be dishonoured, it might be a question whether the lien would not be restored. In all bills of lading there is a special undertaking to pay freight; and yet, generally speaking, a lien exists for the freight; but, if a certain time be allowed for the payment, either by the

(*z*) Buller's N. P. 45.

(*a*) E. 41.

(*b*) 2 Roll. Abr. 92. Cro. Car. 271. Yelv. 66.

Of lien for freight.

usage of trade, or by the terms of the contract, or if the agreement be to pay by bills, the right of lien would be extinguished. In all cases, therefore, the terms of the contract must determine whether a lien exist or not. In cases of freight, however, it is peculiarly favoured by the law.

No lien, however, for freight, can exist unless freight has been earned; and freight has not been earned until the goods have been regularly brought to the place of destination, pursuant to the contract of affreightment, or performance of such contract waived by the freighter. If the misconduct of the freighter, or a stranger, prevent the freight from becoming due, the ship-owner's remedy is by action for damages. Freight, indeed, can only be due at common law, when not qualified by the agreement of the parties, by bringing the goods to their place of destination according to the terms and stipulations of the contract. If, indeed, by the terms of the charter-party, freight be paid in advance, and without the master's fault the voyage is not performed, (as where the ship is captured or lost) the money cannot be recovered back.(c) But if there be no regular loading of the goods by the freighter, so as to give occasion to the earning of freight, *that* becomes the subject of dead freight, and is a claim to be made by the ship-owner upon the contract. So, likewise, if the goods, having been once regularly put on board, any act of negligence, or misconduct of the freighter, shall prevent the freight from becoming due, the ship-owner must seek his remedy upon the covenant in the charter-party. For the lien for freight exists only in respect of freight *actually earned;* and cannot be extended to a sum claimed for dead freight, nor to a sum claimed for demurrage. Therefore, where the freighter covenanted to load a complete cargo, paying different rates of freight for the

(c) De Silvale *v.* Kendall, 4 Maule and Selwyn, 37, and *ante*, Chapter on Charter-parties.

different species of goods, (at per *cwt.*) and that, in case of not fully lading, he would pay for so much in addition as the vessel would have carried, it was determined that the owner had no lien on the goods laden for the freight of unoccupied space. (*d*)

Of lien for freight.

Although it be a general rule that if the master part with the goods, he abandons his lien; nevertheless, where the law takes them out of his possession, it preserves his lien for him, and acts in his place. Thus, the lien of the captain (*e*) for freight continues upon goods impounded in the West India Docks, though he have not given the Company notice to retain for his claim.

Where goods, the property of the consignee, are to be delivered on payment of freight, he may recover them from a stranger wrongfully in possession, without tendering the freight either to him or the master. (*f*)

Miscellaneous cases on freight.

Under this head, we shall advert to a few miscellaneous cases, not easily to be classed under any previous division. A. consigns goods to B. abroad, and orders a cargo in return, for which he sends his own ship. The return cargo is delivered to A.'s captain, B. stating it to be on A.'s account, as A.'s own goods, and to be delivered to A. The return cargo consisting of more goods than the proceeds of those consigned to B., B. draws bills on A. for the difference, which he sends to his agent with a bill of lading drawn in blank; and desiring the agent, in case of A.'s refusal to accept the bills, to indorse the bill of lading to C. A. refuses to accept the bills, and the bill of lading is accordingly indorsed to C. The ship arrives, and C. demands the cargo as indorsee of the bill of lading.

(*d*) Phillips *v.* Rodie, 15 East. 547. Birley *v.* Gladstone, 3 M. and S. 205. See likewise, 2 Merivale, 401.

(*e*) Wilson *v.* Kymer, 1 Maule & Selwyn, 157, and *ante*.

(*f*) Walley *v.* Montgomery, 3 East, 585.

Miscellaneous cases on freight.

The captain, however, refuses, and delivers them to A., who deposits them with D., as his warehouseman. D. then receives notice from B. to hold the goods for B., as his property, in consequence of which D. refuses to deliver them to A. In trover by A. against D., the Court of Common Pleas decided that A. having rested his claim on the supposition that the property had vested in him, could not, if he failed in that defence, set up his lien on the goods for freight. (*h*) The owner cannot maintain *assumpsit* for freight, where there is a contract under seal for the payment of it, between the master, as such, and the freighter. (*i*) But a ship-captain may sue on an implied *assumpsit* for freight earned by his vessel. (*j*)

In declaring on a contract "for the payment of money due for freight and carriage of goods on delivery of the bill of lading," it is necessary, by averments, to shew that freight has become due, either from the voyage having been performed, or from a special stipulation to pay it before, or upon the loading of the goods. (*k*) A plea in answer to a demand for freight, that the vessel was unserviceable for want of repairs, (which the owner had covenanted to make,) must distinctly specify that it was occasioned through the owner's neglect. (*l*) An agreement that in consideration that A. would take on board his ship B.'s goods, for the purpose of conveyance, B. would pay a certain sum on A.'s delivering to him the bills of lading is a valid contract, and the price of the carriage of the goods is recoverable immediately on the loading of them, whether the voyage be performed or not. (*m*) The owners, having stipulated for the freight by an express contract, cannot

(*h*) Ogle *v.* Atkinson, 1 Mars. 323, and 5 Taunt. 759.

(*i*) Schack *v.* Anthony, 1 M. & S. 573, and see *ante*, Chapter on Charter-parties.

(*j*) Brouncker *v.* Scott, 4 Taunt. 1.

(*k*) Blakey *v.* Dixon, 2 B. & P. 321.

(*l*) Havelock *v.* Geddes, 10 East. 555.

(*m*) Andrew *v.* Moorhouse, 1 Mars. 122, and 5 Taunt. 435.

be charged for it by bills of lading afterwards signed by the master. (*n*) There is no implied exception, in a covenant to pay freight, against payment during the time of making repairs, which the owner has stipulated to make, unless rendered necessary through his default. (*o*) The freighter covenanted to pay so much for extra men, part immediately, but not the residue till the ship's discharge, or return from her voyage: held, that the ship's being burnt was a discharge within the clause. (*p*) A freighter who has the option to load wholly with cotton at a higher rate, or partly with rice at a lower rate, and partly with cotton; after electing to load with cotton, and failing to furnish a complete cargo, is bound to pay the higher freight for the whole ship. (*q*) A pledge by the owner (or part owner) of the bills of lading, by which the goods are deliverable on payment of freight, who is, likewise, owner of the vessel, is a pledge of the freight. (*r*) An order in council, permitting certain contraband goods to be landed, has not the effect of legalizing the voyage; and, therefore, does not entitle the master to freight. (*s*) And where a transaction is absolutely illegal, as being a shipment in violation of the navigation act, the master cannot recover the freight, though the defendants, by receiving the goods, have waved all objections to the contrary. (*t*) If the master waves his lien for freight by parting with the possession, he must resort for payment to the original consignor or consignee, or part indorsee of the bill of lading, who takes the goods by virtue of it. (*u*) And a clause in a bill of lading, acknowledging that freight has been paid at the

Miscellaneous cases on freight.

(*n*) Hunter *v.* Prinsep, 10 East. 378.

(*o*) Havelock *v.* Geddes, 10 East. 555.

(*p*) *Ibid.*

(*q*) Benson *v.* Schneider, 7 Taunt. 272. and 1 Moore 21.

(*r*) Hogg *v.* Graham, 4 Taunt. 135.

(*s*) Muller *v.* Gernon, 3 Taunt. 39.

(*t*) Blank *v.* Jolly, Holt's N. P. 554. and 1 Moore 531.

(*u*) Artaza *v.* Smallpiece, 1 Esp. 23. Theresa Bonita, 4 Rob. 236. But see Cock *v.* Taylor, 2 Campb. 587. and the modern cases on this subject before cited in the present chapter.

Miscellaneous cases on freight.

port of lading, or that freight is to be paid there, will not subject the shipper to the payment of freight, if the vessel be lost on the voyage. (*x*) In an action for freight, damage done to the goods by bad stowage cannot be given in evidence, either as a complete defence, or in mitigation of damages. (*y*)

We have already shewn, that where by a charter-party a ship was described to be of the burthen of two hundred and sixty-one tons, and the freighter covenanted to load a full and complete cargo, the Court of K. B. decided, that the loading of goods, equal in number of tons to the tonnage, described in the charter-party, was not a performance of this covenant; but that the freighter was bound to put on board as much goods as the ship was capable of carrying with safety. (*z*) And where an action is brought for not procuring a cargo, consisting of various articles to be carried at different rates of freight, the proper measure of damages is to estimate the freight by means of an average; and the freighter cannot, in calculating the amount of dead freight, insist upon the specific burthen of the ship as stated in the charter-party, unless the misrepresentation has been fraudulent. (*a*) But where a ship was chartered on a particular voyage, for a gross sum by way of freight, and the captain signed bills of lading for the cargo, (which was the property of, and consigned to, a third person,) specifying a rate of freight amounting to a less sum than that mentioned in the charter-party, Lord Ellenborough held, that the ship-owner had no lien on the cargo beyond the freight specified in the bills of lading. (*b*)

(*x*) Mashiter *v.* Buller, 1 Campb. 84.

(*y*) Sheilds *v.* Davies, 4 Campb. 119. and *ante.*

(*z*) Hunter *v.* Fry, 2 B. and A. 421. and *ante*, Chapter on Freight.

(*a*) Thomas *v.* Clarke, 2 Stark. 450. See Gibbon *v.* Mendez, 2 B. and A. 17. and *ante.*

(*b*) Mitchell *v.* Scaife, 4 Campb. 298.

Miscellaneous cases on freight.

Lien is a right which must be derived from law or contract, though the latter is more an agreement for a pledge. The question whether a tradesman has a general or particular lien is decided on the same grounds at law as in equity, and in the same way. There are some liens which exist only in equity, but the lien for freight is not one of them. A clause in a charter-party, binds the owners, ship, appurtenances, freight, and goods, &c. to be laden on board, in a penal sum for the due performance of the articles, &c. of the charter-party. Whatever construction and effect such a clause might have in other countries, it having been decided here as inoperative to give the ship-owners a lien, the Court of Equity held they were not bound to find an equitable effect for a clause, merely because the construction which a Court of law had put upon it would leave it inoperative. (*c*)

(*c*) Gladstone *v.* Birley, 2 Mer. 401. See this case *ante*, p. 179.

CHAPTER VII.

OF GENERAL AVERAGE.

Definition of general average.

GENERAL average may be defined to be, an assessment for a loss, or an expense which the loss creates, towards which both ship and cargo are bound to contribute *pro ratâ*, because it has been incurred for the general benefit and preservation of the whole. Simple or particular average is, damage incurred *by* or *for* one part of the concern, and which that concern alone must bear.

General average, therefore, is founded upon the principle of the equity of the cases to which it is applied. Much is not to be met with in the law books on this subject. It is, however, an obvious principle of natural justice, that where two or more parties are concerned in a common sea-risk, and one of them makes a sacrifice for the general safety, the loss shall be assessed upon all in proportion to the share of each in the venture; and the greater sacrifice of the first shall be compensated by the contribution of the others. It seems totally unnecessary to go to the Rhodian or Roman law for what common sense and common justice must suggest to every one; and, though it be pleasing to learned curiosity to perceive the customs of our own times confirmed by such ancient precedents, we should be satisfied with finding the analogy, without grounding ourselves upon it as the reason. General average, in a word, is the common law and justice of partnership; and, defined according to its nature, is a compensation from the common stock of a sea-venture, in the several proportions of the partners in it, for the special

loss or sacrifice made by one or more for the common good. (*a*)

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Three things, therefore, are here necessary to constitute any claim upon the ground of general average; first, that there should be a special sacrifice by one or more for the benefit of the whole; secondly, that it should be for the purpose, and with the intent, (*causâ et mente*) of the preservation of the common concern: thirdly, that the common concern should be benefitted by the partial sacrifice.

The special sacrifice, it would appear, must be something done and not suffered: there must be the will and agency of the party making it; his actual or presumed content. Thus, in *jettison*, or, to employ the more ancient term of the *lex Rhodia*, the *jactura mercium*, the owner himself of any part of the cargo might throw it overboard, or the captain or mariners might do it for him. But, in order to make the cargo contribute, this sacrifice must

(*a*) In the case of the Copenhagen, Sir William Scott, in delivering his judgment, says:—"General average is for a loss incurred, to which the whole concern is bound to contribute *pro ratâ*, because it was undergone for the general benefit and preservation of the whole. *Simple* or *particalur average* is not a very accurate expression; for it means damage incurred by or for one part of the concern, which that part must bear alone; so that, in fact, it is no average at all; but still the expression is sufficiently understood, and received into familiar use. The loss of an anchor or cable, the starting of a plank, are matters of simple or particular average, for which the ship alone is liable. Should a cargo of wine turn sour on the voyage, it would be a matter of simple average, which the goods alone must bear; and there might be a simple average for which each would be severally liable under a misfortune happening to both ship and cargo at the same time, and from a common cause; as if a water spout should fall on a cargo of sugars, and a plank from the same violence should start at the same time. General average is that loss to which contribution mnst be made by both ship and cargo; the loss, or expence which the loss creates, being incurred for the common benefit of both."—1 Robinson 293.

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have been made, as well for the sake of the cargo as for the ship, or rather for the sake of the cargo through that of the ship. If merely for the sake of the ship, nothing has been done for the cargo; and, therefore, nothing can be claimed for it. It is the duty of the master to take care of the ship, whether there be a cargo or not; and therefore all sea-damage, injury by tempest, loss of masts or sails, are not losses suffered for the sake of the cargo, and are not to be repaired by its contribution. If a ship strike on a rock, or be stranded; in the first place, it is something suffered and not done; and, secondly, it is nothing either suffered or done for the sake of the cargo. No claim, therefore, to general average lies here. But if a mast be then cut down, or any part of the cargo thrown overboard in order to save the rest from perishing, there will be, *quatenus* the mast cut down, and the portion of the cargo thrown overboard, a general average; but with respect to the damage to the hull, or any other part of the ship, by the rock or stranding, there will be none. Again, if the cargo be landed in the ship's boats, and the masts be then cut down, to get the ship from a rock, it would be at least doubtful whether, the mast being cut down for the ship, and not for the cargo, general average would lie; if the cargo were not reloaded, certainly not.

The second requisite to constitute the claim of general average is, as we have above said, that the sacrifice be made *causâ et mente*; that is to say, for the intent and purpose of saving the common stock.

The third requisite is, as stated above, that the common concern should be benefited by the partial sacrifice; for, if lost, the whole fund is gone, and every partner, of course, loses his share.

The above, therefore, may be stated to be the leading rules of general average; which may be thus shortly defined;—an equitable apportionment amongst the several

sharers of a venture in repayment of a loss sustained by one of them for the common safety. The most usual form in which this sacrifice of part for the sake of the whole is made is by *jettison*, or throwing part of the cargo overboard; and it is under the consideration of this being the usual practice, and of frequent occurrence in sea-voyages, that the Rhodian law, upon which most writers have regarded the modern law of average to be founded, is stated in the following terms: "If goods are thrown overboard in order to lighten a ship, the loss incurred for the sake of all shall be made good by the contribution of all." It is perhaps owing to the strong and admitted equity of a proportionate contribution under these circumstances, that so few cases occur in our law books under the head of general average. A very brief examination of these cases will be sufficient to establish and explain what we have stated to be the necessary constituents of any claim upon the ground of general average; namely—1. That it must be a sacrifice by one or more for the benefit of all; something done, not suffered. 2. That it must be done with the purpose of saving the common concern. 3. That the common concern must be benefitted by the partial sacrifice.

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The first of these cases, indeed, affirms in express terms all the above principles.(*b*) As the ship Argo, laden with a cargo of wheat, was about entering her homeward port, Sunderland harbour, with a fair wind, she was suddenly encountered by a violent squall, by which the crew were obliged to let go an anchor to bring her up. With the assistance of some men who came to her for that purpose in a pilot boat, they fastened the ship by a rope to the pier head, in order to preserve her and the cargo from the storm. This rope broke, and the ship drove alongside the pier, to which the master and crew again made her fast with new ropes and hawsers.

Birkley *v.* Presgrave.

(*b*) Birkley *v.* Presgrave, 1 East. 220.

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Whilst they were thus occupied, they saw that another vessel was breaking adrift; and, being apprehensive that this latter vessel would run foul of the Argo, they cut the cable of the Argo's best bower anchor, and employed it to fasten her to a more secure part of the pier; and by these means saved her from foundering. Afterwards, the master, for fear the ship should make water and the corn be thereby spoiled, the ship having a hole through her bottom, occasioned by another ship running foul of her in the storm, got twelve men to go on board to keep her clear of water, in order that the cargo should not be damaged or spoiled, and which men were paid at the rate of half a guinea each. Under these circumstances, the owners brought an action against the freighters, to recover their proportion of general average, alleging that this sacrifice of the ship's tackle for an unusual purpose, and for the sake of the cargo, was a suitable subject matter of such average. And the Court of King's Bench were unanimously of this opinion; Lord Kenyon, in his judgment, stating, that general average was founded upon the common principles of justice; that all ordinary losses and damage sustained by a ship, happening immediately from the storm or perils of the seas, must be borne by the ship-owners; but that whatever the master had used and lost under the particular emergency, and out of the usual course, for the benefit of the whole concern, was a subject of general average. And an objection having been taken in the course of the argument, that it did not appear that the master had consulted the crew upon the expediency of such sacrifice, the Court said, that this was a rule rather of prudence than necessity; and in no degree necessary to constitute the claim, though it might be a good proof of the degree of peril.

Da Costa *v.* Newnham.

In an earlier case, before the same Court, (*c*) which was an action against some underwriters, one of the questions

(*c*) Da Costa *v.* Newnham, 2 T. R. 407.

at issue was, whether the charges of loading and unloading a cargo, and the taking care of it, were subject matter of general average, in a case where a ship had been compelled to put into port for the benefit of the whole concern. Though the case was determined upon other points, the Court, in the course of their judgment, spoke of such loss, or cost, being matters of general average, and having been so admitted in an earlier case before Lord Mansfield. Of general average.

A passage from Beawes is cited in a learned work on Insurance, (*d*) the substance of which states it to be the established immemorial law of Europe, that if a ship be forced by a storm to enter into a port to repair any damage sustained, and if she cannot continue her voyage without an apparent risk of being lost, in such case the wages and victuals of the crew are to be brought into average, from the day on which it was resolved to seek a port to refit the vessel, to the day of her departing from it, with all the charges of loading, unloading, anchorage, pilotage, and every other expense incurred by this necessity.

As the ship is the vehicle of the owners, in their character as carriers, there appears some doubt and difficulty how far the repairs of a ship made in the course of a voyage, (the ship having suffered under a storm, and putting into port to refit,) can be made a subject of general average. In the case of Da Costa *v.* Newnham, the wages of the workmen were claimed, as well as the wages and provisions of the seamen, together with the charges of loading and unloading; and the Court appears to have acceded to the demand. But as one of the circumstances of this case was, that the underwriters themselves, the defendants in the action, ordered the repairs, their liability for them may be imputed as well to this direct order, as to the principle of average. The proper limit of this principle, therefore, seems to be, that the repairs and refitting of

(*d*) Park on Insurance, 143.

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the ship are not, *in* ordinary cases, the subject matter of general average; but may occasionally become so when they *are* rendered necessary for the *sake of the cargo;* for example, where the cargo would be injured or endangered, unless such refitting and repairing were made in the course of the voyage, though the ship itself, without a cargo, or without *such* a cargo, might have worked its passage homewards, or to the port of its destination.

Jackson *v.* Charnock.

Upon these principles, in another insurance case before Lord Kenyon, where a ship-owner had let out his ship to the freighter for a voyage, and in the course of such voyage the ship had to put into a port to refit; the Court decided, that the expense of such refitting belonged entirely to the owner, and that the freighter was not subject to general average, in proportion to his interest in the cargo. (*e*) But even in this case, as in that of Da Costa *v.* Newnham, the point, whether refitting from a storm were a subject of general average, was not directly determined upon its own merits; as it appeared, upon an examination of the charter-party, that it contained a stipulation by the owner that the ship should be kept in repair at his expense. The counsel for the plaintiff, the ship-owner, contended for the liability of the cargo to average under these circumstances, of the largest extent; and stated it to have been so admitted by the Court in the case of Da Costa *v.* Newnham. But Lord Kenyon, in giving judgment, appeared inclined to limit this alleged principle of the case of Da Costa *v.* Newnham; not indeed so much by a direct opinion to the contrary, as by such a definition of general average as would manifestly not include this inference. His Lordship said, " The meaning of general average has for a long time been well understood in the commercial world; if, in the hour of danger, masts are cut away, or goods are thrown overboard, those who are benefited by the preservation of the ship are to contribute to the general loss thereby sustained, in proportion to

(*e*) Jackson *v.* Charnock, 8 T. R. 509.

their respective interests. But in this case we are delivered from all consideration respecting a general average, because we are called upon to decide on the particular stipulations contained in this charter-party."

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In a much more recent case before Lord Ellenborough, the decision of the Court proceeded much further; and has in some degree established a limit how far, and under what circumstances, such expenses of refitting in the course of a voyage may be rendered matter of general average.

Plummer *v.* Wildman.

The ship Cambridge, of which the plaintiffs in the action were owners, and the defendant was the freighter, sailed with a cargo of sugar and rum, from Kingston, in Jamaica, to London. A day or two after the ship sailed, and while she was in the prosecution of her voyage, she was run foul of by a brig, which was unavoidably driven against her by the violence of the wind and weather, by which accident her stern and knees were broken, and the master was in consequence obliged to cut away part of the rigging, and to return to Kingston to repair the damage sustained by the accident and the cutting away. The ship could not have prosecuted her voyage, nor could she have kept the sea with safety without returning and repairing. Upon her return, the cargo was necessarily re-landed and warehoused, in order that such temporary repairs might be done as would enable her to prosecute her voyage. Under these circumstances, upon the return of the vessel to London, the owners made a demand upon the freighter for his share of general average; and included in such demand of average the expense of the pilotage into Kingston on the ship's return, the surveyor's bill for ascertaining the damage, the cost of loading and unloading the cargo, the wages and provisions of the crew, and the amount of repairs. Upon the argument in the King's Bench, Lord Ellenborough in substance said, that if a ship be obliged, from whatever cause, for the safety of the whole concern, to return to port, whatever expenses are absolutely

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essential to enable her to prosecute her voyage, may be considered as general average; but if the ship, by such expenditure, gain a lasting benefit, there must be a deduction on that account of so much, which must be placed wholly to the ship-owner's account. That the repairs, with the foregoing limitation, were general average; so, likewise, the expenses of unloading the cargo to make them. But not the wages and provisions of the crew, recruiting them, or the like. Bayley, J. said, that he doubted whether the repair of any particular damage could be *placed* to the account of general average, inasmuch as it is a benefit done to the ship, and if the captain could make it a general average, by putting into port to repair, it would always be his interest to endeavour to do so. If, however, the repairs were merely such as were necessary to enable the ship to prosecute her voyage home, and were afterwards of no benefit to the ship, such repairs, he thought, would properly come under a general average. Therefore, deducting the benefit, if any, which resulted to the ship from such repair, the rest he thought was to be placed to the account of general average. (*f*)

In this case, the general average was founded upon two circumstances; the better prosecution of the voyage by putting back to repair the damage, and the actual cutting away of the rigging by the master. Accordingly, in another case, where both these circumstances were wanting, and there was nothing but the mere circumstance of putting back, in short, mere refuge and delay till better weather, and the repair of some cordage lost in the storm, the decision was different; the Court holding, that such putting back for shelter, and such repair of the mere damage of the ship, without any necessary connexion with the safety of the cargo, were in no degree subjects of general average by the law of England.

(*f*) Plummer *v.* Wildman, 3 M. & S. 482.

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In this case (*g*) the ship had sailed with a cargo from London for Lisbon; but, when off the Isle of Wight, had encountered such strong winds and heavy seas, and had received so much damage in her bowsprit, that, upon a consultation with his crew, the master put into the port of Cowes, in the Isle of Wight. Here he remained about twenty days, awaiting better weather, and repairing his vessel. Upon the conclusion of her voyage, the owners claimed the expense of this delay, and this repair of his bowsprit as general average; the particulars of their demand consisting of about 200*l.* for the wages of the master and crew during the stay at Cowes, about the same sum for their provisions, and about 150*l.* for the repairs. But the Court refused the whole demand. Lord Ellenborough observed, that general average must lay its foundation in the sacrifice of part for the sake of the rest; but that here was nothing of the kind.

Under these cases, therefore, the following rules as to general average may be considered to be recognised and established upon adjudged cases; namely, that the ship and freight may become subject matter of general average, as well as the cargo; not, indeed, any ordinary loss of a ship under the sea and winds, such as blowing away the mast or sails, or any loss in stranding, but any *extraordinary* loss or expense which the master may have incurred for the common benefit of the ship and cargo; such as the *cutting* away the masts or sails to lighten a loaded ship, and any repairs or refitting which would *not have been necessary, or not have been made, if the cargo had not been on board.*

Where the cargo is called upon to contribute, the cargo must have received some extraordinary service, some *particular* benefit, to which, under the contract, it was not entitled. Nor must the benefit to the cargo, namely, the

(*g*) Power and Whitmore, 4 M. & S. 141.

Of the general principles of general

safety or due care of it, be merely an incidental consequence of the loss or expense incurred, but must have been the *object* of it; for, as the ship and cargo are necessarily united, every thing attending the safety of the ship would equally affect the cargo; and no case could possibly occur of any thing done for the ship, which could not be equally asserted to have been done for the cargo. The common benefit of the cargo and ship is therefore too large a principle for general average, as it would necessarily include any loss in the defence of the ship, or in the extra working of the ship by pumping, &c.; nothing of which, by the Law Merchant or the law of England, is included in general average. The loss or expense, therefore, must have some direct view and purpose towards the conservation of the cargo, the proper and natural criterion of which appears to be, whether such loss or expense would have been incurred if there had been no cargo, or not such a cargo as at that time on board. Thus, damage in the hull and masts, occasioned by carrying too great a press of sail to escape the enemy, is not a general average (though the cargo of course is saved, together with the ship,) because it is nothing done extraordinarily for the sake of the cargo; it is nothing done which the captain would not have done if there had been no cargo on board.

Covington v. Roberts.

It therefore does not fall under the definition of general average, as a previous expense, loss, or sacrifice of one party in a venture, of more than his share of the loss, for the sake of all. (*h*)

Upon the same principle, likewise, proceeded the decision in a recent case before Gibbs, C. J. (*i*) This was an action of assumpsit to recover a contribution in the nature of general average, under the following circumstances.

Taylor v. Curtis.

In November, 1813, the ship Hibernia (the owners of which were the plaintiffs in the action, and one

(*h*) Covington v. Roberts, 2 N. R. 378.

(*i*) Taylor v. Curtis, Holt's N. R. 193. and 6 Taunt. 608.

of the freighters the defendant) sailed on a voyage, under convoy of His Majesty's ship Queen. In consequence of a hurricane she was separated from her convoy, and on the 11th of December fell in with an American privateer. The captain, seeing no prospect of escaping by sail, determined to resist. The Hibernia mounted only six guns, and her crew consisted of twenty-two men. The American privateer carried twenty-two guns, and had one hundred and twenty-five able seamen on board. Notwithstanding this disparity of force, the Hibernia engaged her; and, after a conflict of eleven hours, in which her hull and rigging were greatly damaged, one of her crew killed, and four wounded, she succeeded in beating off the privateer. The Hibernia arrived at St. Thomas's, almost a wreck; and delivered her cargo in safety to the respective consignees. The value of the entire cargo was 21,692*l.*, and the goods shipped by the defendant were to the amount of 1000*l.* The entire estimated loss to the plaintiffs was 2,908*l.*; and the average, as calculated upon the defendant's proportionate share, amounted to £138. 8*s.* 5½*d.* which the plaintiffs sought to recover by the present action. Part of the charges was for medical and surgical expenses for the wounded. Gibbs, C. J., in delivering his opinion, said, I do not think this is general average. It was the duty of the sailors to defend the ship from capture in proportion to their means, and within measures of discretion. By so doing all parties have benefitted. But in what respect have the captain and crew exceeded the line of their proper duty? What sacrifice have they made which they were not bound to make? The expense of medical and surgical aid must be borne by the parties themselves. Although this may be an ungracious defence, I am of opinion that it does not fall within the principle of general average. His Lordship directed a verdict for the defendant, with liberty to the plaintiffs to move to set it aside.(*k*) Of general average.

(*k*) In the ensuing term, this case was most learnedly argued in the Court of Common Pleas. Lord Chief Justice Gibbs delivered the

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As to what is bound to contribute towards general average, it is a principle necessarily resulting from the nature of the thing, that all the interests must contribute which are benefitted by the sacrifice made, or expense incurred, for the conservation of the *whole*. The freight, therefore, must contribute to general average; because the freight is preserved for the owners as well as the cargo for the merchant. And, therefore, where a ship was chartered out and home, and the freight was payable upon every ton

judgment of the Court. The doctrine of general average, he said, had its origin in the Roman law. The different states of Europe have made different regulations on this subject, all of them professing to follow the *Rhodian* law, but often differing from each other; and the foreign jurists have made very different comments upon that law. In this country there are no local regulations on this subject; we should therefore, as in all doubtful cases, resort to the judgments of our municipal courts, if this point had ever arisen there. The damages claimed fall under three denominations; *first*, the damage done to the vessel and rigging in the engagement; secondly, the expense of curing the wounded sailors; and, thirdly, the ammunition expended in the defence. There is nothing in any of the foreign jurists which we think ought to govern us on these points, unless they had been supported by admitted principles, decided authorities, or general usage. None of the decided cases apply to the present; and we have unfortunately been so long engaged in war that instances of this kind must frequently have occurred; and, as there appears to be no case in which a demand like the present has been made, we must conclude from that silence that no general usage, which could justify such a demand, has existed; and, therefore, that such losses cannot be taken to fall within the principle of general average. If it could have been shewn that such losses do fall within the general principle, I agree that the plaintiffs would have been entitled to recover, though this had been the first case in which such a demand had been made. But there is great doubt on the subject, and the inclination of my mind is that they do not. It is true, the determination to resist was resolved on for the general interest; but still it is not like the case of casting goods over-board for the general benefit. The loss fell where the chance of war directed it; and where, therefore, in point of justice, it ought to fall. If this question be right, the plaintiffs are not entitled to recover. 2 Marsh. 309.

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brought home, it was decided, that the freight should contribute to a general average arising on the outward voyage. (*l*) In a word, all merchandise conveyed in a ship for the purposes of traffic, whether belonging to merchants, to passengers, or to the owners or master, of whatever kind, or however small be their weight in comparison to their value, must equally contribute in proportion to their full worth; the contribution being made not on account of the place occupied by them in the ship, but of the safety obtained. Jewels and bullion, therefore, contribute according to their full worth; but, by the custom of the sea, the wearing apparel, jewels, or other things belonging to the persons, or passengers, or crew, and taken on board for their private use, and not for traffic, are not bound to contribute. By the same custom, the owners are not to contribute for the victuals or ammunition of the ship, nor the mariners for their wages. The contribution of the owners is to be rated on the value of the ship and freight at the end of the voyage, after deducting the wages of the crew, and other expenses of the voyage. The contribution of the cargo is rated upon the value of the cargo, at the place to which it is brought. By the custom amongst merchants, or rather amongst owners, masts, cables, rigging, &c. are valued at two-thirds of their price when new.

As property is not altered by capture, and still remains in the owners, till divested by a regular condemnation, the owners of a ship and cargo have a claim to contribution for ship's stores necessarily thrown overboard, after a vessel is captured, and whilst she remains in the hands of the enemy. And the circumstance of an owner having effected an insurance will not prejudice his right to recover for general average. The reason is, that there is always a *spes recuperandi*, and a postliminious right. (*m*) And upon an embargo or detention, where there was an abandon-

(*l*) Williams *v.* London Assurance Company, 1 M. and S. 318. Cox *v.* May, 4 M. and S. 155. and see Da Costa *v.* Newnham, 2 T. R. 408.

(*m*) Price *v.* Noble, 4 Taunt. 121.

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ment both of ship and freight to the insurers respectively, and the owner was paid as for a total loss, and afterwards the ship was released and earned freight; it has been decided, that the wages of the crew, the port, and other charges, are *quasi* a general average, or salvage, on the ship and freight, according to the particular nature of such charges, and the persons to whom they belonged. (*n*) In this case the Court permitted the assured, in an action against him by the underwriters on freight for money had and received, to deduct the same out of the sum to be recovered.

Where the average arises from repairs, the criterion to determine whether a ship has sustained a lasting benefit from them, and therefore whether the whole, or only a proportionable part, is to be set down to the account of general average, is to consider whether, having finished the adventure, the repairs are of any longer use to the ship, or whether they were merely temporary. (*o*)

General average being founded on principles of manifest equity, and containing a positive right, an action at law is maintainable for such contribution, as well as a proceeding in equity. (*p*) And as the right to the satisfaction is positive, it is no just objection that a due assessment amongst the several parties is occasionally difficult, and that each may have an action at law; though, according to the nature of equitable remedies, all parties might be joined in one suit.

In an action before Lord Ellenborough, (*q*) it appeared that the captain of a general ship had been arrested by a ship's agent at a foreign port, and had sold part of the cargo to procure his release. Upon the return of the

(*n*) Sharp *v.* Gladstone, 7 East. 24.

(*o*) Plummer *v.* Wildman, 4 M. and S. 482. and *ante*.

(*p*) Berkley *v.* Presgrave, 1 East. 220. and *ante*.

(*q*) Dobson *v.* Wilson, 3 Campb. 480.

vessel, the proprietors of the part of the cargo sold brought an action against the other shippers, as for repayment in the nature of general average. Lord ELLENBOROUGH said :—" Upon the general question, I am inclined to think that such an action as this may be maintained. A Court of Equity may, perhaps, be a more convenient forum for adjusting the claims of the different parties concerned; but, if a shipper of goods which are sacrificed for the salvation of the rest of the cargo is entitled to receive a contribution from another shipper, whose goods are saved, I know not how I can say that this may not be recovered by an action at law. This is a legal right, and must be accompanied with a legal remedy. The difficulty of shewing by strict evidence the exact amount of the contribution is great; but, as there are grounds upon which it may be calculated with great certainty, I think this is no objection to the action. The plaintiff, by proceeding at law, takes that difficulty upon himself; and, if he is not prepared to overcome it, he cannot succeed. Nor does the multiplicity of actions which may thus be brought appear a ground on which I can hold that relief must be sought in equity. If there is no valid objection upon principle to a particular action, I know not how I can turn round the plaintiff by saying, that an inconvenient number of similar actions may be commenced. I cannot perceive why the shipper of goods may not maintain an action at law for general average, as well as the owner of the ship. 2. I must see, however, that this is a case in which general average can be claimed; and I am of opinion that it is not. Is there here any thing like a *jactus mercium levandæ navis gratiâ?* A jettison to lighten the ship is not the only foundation of general average; but it must arise from that, or something analogous. The distinction between general and particular average would otherwise be entirely abolished; and the shippers of goods would be called upon to contribute to losses from which they derive no benefit, and which ought to fall exclusively on the ship-owner. Here the agent of the ship arrests the person

Of actions at law for contributions to general average.

Dobson *v.* Wilson.

Of actions at law for contributions to general average.

of the master, (both being agents of the owner,) who had undertaken to carry the whole cargo safely to its destined port. This is different from the arrest of the captain by a foreign force. Even there I am not aware it has ever been held that the master is so inseparably united to the ship, that to redeem him it is lawful to sell a part of the cargo. The process of the Court of Justice at Copenhagen was not directed against the ship, and was confined entirely to the person of the master; it was merely an arrest for a personal debt. I was at first struck by what was said about the Sound dues; and, had the ship been seized for non-payment of these, I should have thought the sale of a part of the cargo to pay them, in the absence of all other means to raise money for that purpose, might have been the foundation of a claim for general average. But these dues had been paid to the Danish government by Parker, the ship's agent; and the money so paid merely constituted a private debt due to him, which he sought to recover by process against the person of the master. It comes to this; whether, if the captain be severed from the ship, whatever be the cause, he may sell a part of the cargo to redeem himself? I see no distinction between this arrest for debt, and an arrest for an assault he might have committed in the streets of Copenhagen. No case has been cited, or principle advanced, to shew that a claim for general average can arise from an act done to redeem the master of a ship from such an imprisonment. I, therefore, do not think that any part of the plaintiff's goods was sacrificed for the safety of the ship and the residue of the cargo, in such a manner as to give them a right to a contribution from the other shippers of goods on board. Their proper remedy is against the owner of the ship."

Dobson v. Wilson.

In the assessment of the several shares of the parties to a general average, the proportion is usually fixed by accountants. By the civil law the captain, as the representative of the owners, and in a degree of the freighters collectively, was empowered to settle the several propor-

tions to a general average, and to receive the sums from each. The same rule prevails in some foreign countries. But, in England, the practice is for the broker or ship agent to make a settlement of the average, which settlement, however, is not conclusive, although (when the principle of contribution is not disputed) according to the forms of business it is usually paid. And in the care of a general ship the master usually takes a security, before the delivery of the goods, for payment of any general average which may have arisen, and after the same shall be adjusted.

What is bound to contribute to general average.

It is a maxim however of the law of England, that the lenders upon bottomry and *respondentia* shall neither contribute to general average, or salvage. The reason is, that they stipulate for a sum certain, and under the sole contingency of the arrival of the ship and cargo at the port of destination. It is not an understood condition between the parties, that the *quantum* of the sum lent shall be subject to any diminution short of a total loss. Lenders upon this security have no property in the goods or ship, and do not therefore fall within any of the principles of general average.(*r*)

(*r*) See *ante*, Vol. I. p. 423.

CHAPTER VIII.

OF STOPPAGE IN TRANSITU.

Of the nature of stoppage *in transitu.*

AS general average, where the occasion of it may arise, is one of the onerous obligations of the merchant and freighter; so stoppage *in transitu*, or the right of an unpaid consignor to countermand the delivery of the cargo, where the insolvency of the consignee shall intervene between the consignment and the arrival, is one of the merchant's and freighter's most valuable privileges; and, upon the liberal principles under which it is now admitted by the courts of law, is one of the best securities against fraud in commercial dealing.

The right of stoppage *in transitu* has been largely interpreted by recent decisions. It is no longer vigilantly guarded, and jealously admitted by the Courts of Law, as a merely equitable right; but is justly adopted as within the spirit and principle of the common law. It is a principle of law that the sale of goods passes them by force of the contract, and delivery is not necessary to accomplish the title of the vendee against any but the vendor. Whilst the goods remain in the hands of the vendor, he has a lien upon them till he is paid. Our oldest law books, following therein the letter of the civil law, consider the payment of the price, (day not being given) as a condition precedent implied in the contract of sale. (*a*) But previous to the actual delivery, or what is equivalent, the law avails itself

(*a*) Hob. 41.

of very slight circumstances to put the *unpaid* vendor in the repossession of his property upon the insolvency of the vendee. The vendor, therefore, has a right, for just cause, to revoke the intended delivery, and to resume possession of his goods by any means not criminal. The civil law, with respect to the right of lien on goods, extends farther than the law of England; by which, as we have above stated, the lien giving the right of stoppage *in transitu* is gone, where possession actual or constructive has been taken by the vendee; but the lien of the civil law prevailed even against actual possession. *Quod vendidi non aliter fit accipientis, quam si aut pretium nobis solutum sit, aut satis eo nomine factum, vel etiam fidem habuerimus, emptori sine ullâ satisfactione.* (*b*)

Stoppage *in transitu.*

There is a marked distinction, however, between this right, and the right to rescind the contract. The rescission of the contract requires the consent and concurrence of both parties. But, in stoppage *in transitu*, the vendor must always exercise the right adversely with respect to the vendee, lest, what the law has given as an equitable right for the security of an honest vendor, might be converted, by collusion, into the means of fraudulent preference amongst the creditors of an insolvent.

The right of stoppage *in transitu* must be exercised adversely to the vendee.

In a case before Lord Ellenborough, the consignee of a cargo, after an act of bankruptcy, delivered up the bills of lading to a third person, upon an agreement that he should apply the proceeds of the sale to the payment of some bills of exchange given for the cargo; and, in order to render this transaction more valid, the consignee procured the consignor to avow and adopt the act of such third party, as the exercise of his own right of stoppage *in transitu*. The Court held this transaction to be collusive, and the assignees recovered the value of the cargo. (*c*)

(*b*) Dig. lib. 18. tit. i. l. 19. (*c*) Siffkin and Another *v.* Wray, 6 East. 371.

Division of the subject.

But the legal exercise of this right will be best understood by considering it in the three divisions into which it naturally distributes itself. First, In what cases, and by what parties, goods may be stopped *in transitu.* Secondly, What is a transit; how far does it extend; and where terminate? And, Thirdly, What shall defeat the right?

First, In what cases, and by what parties, goods may be stopped *in transitu.*

In what cases, and by what parties, goods may be stopped *in transitu.*

Here the general rule may be stated to be, that, as stoppage *in transitu* is the right of an unpaid vendor to countermand the *ultimate delivery* of the goods for the sake of *securing the payment*, or *recovering the goods*, in the event of the *insolvency* of the buyer; so, this right not only belongs to every unpaid vendor, but to every one in the same equity and character.

The most simple application of this rule is, where the consignor has sent the cargo on credit to the consignee, and where the consignee has failed before the arrival and actual or constructive delivery. Here the consignor has an undisputed right to stop the goods in transit, this being the first form in which the Courts of law adopted the principles and doctrine of stoppage *in transitu* from the Courts of Equity. (*d*) But as stoppage *in transitu*, as above said, is not the right of rescinding the contract, but merely of holding the goods back, as in lien, till the price be paid; and, upon non-payment, of receiving them back altogether; so the insolvency of the buyer is a necessary circumstance, in the absence of which it cannot be exercised by the vendor. Upon this principle of the right of stopping *in transitu* not being a right to rescind the contract, it was holden that a freighter had no right to countermand the delivery of a cargo, where he had transmitted the bill of lading, and sent the goods to a corre-

The vendee must be insolvent to justify this right.

(*d*) Lickbarrow *v.* Mason, 2 T. R. 63.

spondent of *mutual* dealings, and in trust to pay certain acceptances. (e) Upon the same principle, where the consignor had sold goods at a certain credit expressed in bills drawn at so many months after date, and had sent the cargo on the account, and at the risk of the buyer, together with the bills for acceptance; it was holden that such consignor could not stop the goods on their arrival, and insist upon immediate payment as the condition of delivering them, the consignee being willing to accept the bills, and *not having failed in his circumstances.* (f)

Stoppage *in transitu.*

Upon the same principle, in the case of the Constantia, (g) decided in the Court of Admiralty, Sir William Scott expresses it as the result of the cases, and as a principle of the mercantile law, "that persons having accepted orders, and made a consignment, have not a right to vary the consignment, except in the sole case of *insolvency*. The alteration may be made provisionally, without actual insolvency; but, if the insolvency do not take place, the act which has been done is a mere nullity, and the seller has exercised a power to which the law does not ascribe any legal effect." The learned judge added, in that style of precision and comprehensiveness which characterises all his judgments, "In the law of England, as far as I can collect it, and in all books into which I have looked, it is not an *unlimited* power that is vested in the consignor, to vary the consignment at his pleasure in all cases whatever. It is a privilege allowed to the seller, for the particular purpose of protecting him against the insolvency of the consignee. Certainly it is not necessary that the person should be *actually* insolvent at the time. If the insolvency happens before the arrival, it would be sufficient, I conceive, to justify what has been

Semble, actual insolvency not necessary.

(e) Haille v. Smith, 1 Bos. and Pull. 563.

(f) Walley v. Montgomery, 3 East. 585.

(g) 6 Robinson 321. The judgment of Sir William Scott is particularly valuable in this case, as he therein reviews the modern law of Europe on this subject.

Stoppage *in transitu.*

done, and to entitle the shipper to the benefit of his own provisional caution. But if the person *is not* insolvent, the ground is not laid on which alone such a privilege is founded."

But, though the insolvency of the vendee be a necessary circumstance to afford a legal occasion for the exercise of stopping *in transitu*, the mere occurrence of bankruptcy, or insolvency, is not itself a countermand of the delivery, nor a stoppage *in transitu per se.* There must be the direct act of the vendor, or of his authorised agent. If the goods, therefore, come to the possession of the assignees under the commission, before they are actually stopped *in transitu*, the right of stoppage in the vendor is gone. (*h*)

As between principal and factor.

As the insolvency of the vendee is the first circumstance to afford the occasion of stopping *in transitu;* so the character of vendor, or, at least, the circumstance of being in the equity of that character, is necessary to give this right. It is, indeed, only between vendor and vendee that this right can, in strictness, exist; it being a right to withhold, perhaps, *revest* the property; and, therefore, it supposes a primary property in one, and a secondary, or conditional property in another. Therefore, between the principal and mere factor there can be no stopping *in transitu*, the property, in case of a consignment to a factor, being never divested out of the principal. If money on account be due to the factor, he may have his lien on obtaining possession; but he has no claim previous to possession. (*i*)

If the principal be indebted to the factor for advances, and the advances have any immediate connection with the cargo; or, if the circumstances of the consignment will bear the construction that it was sent on *account;* in short, if there be a strong equity for the factor, and the incidents of the case afford the law any hold by which to

(*h*) Ellis *v.* Hunt, 3 T. R. 464. (*i*) Kinloch *v.* Craig, 3 T. R. 119, 783.

Stoppage *in transitu.*

assist him: the Courts will endeavour to protect the broker or factor under such circumstances, by considering it to be an assignment on *mutual* account. But without possession there can be no lien.

Upon the same principle, if a person having a lien part with the possession of the subject of such lien, he cannot afterwards stop the goods *in transitu*, though the owner may have become bankrupt before their arrival. (*k*)

As the vendor has a right to stop *in transitu*; so likewise, as above observed, has every person within the equity of a vendor. Upon this principle, a purchaser upon his own credit, by order of another person to whom he consigns, is a vendor entitled to stop *in transitu.* (*l*) So the consignor of goods for sale, on the joint account of himself and the consignee, in the event of the insolvency or bankruptcy of the latter. (*m*) But the mere surety for the payment of the price by the vendee, though he may have accepted bills drawn upon him for the value of the goods by the consignor, cannot stop *in transitu.* (*n*)

It is above said, that the first and most simple form of stopping *in transitu* is, where the consignor has sent the goods upon credit. It was in a more advanced state of the legal doctrine of stoppage *in transitu*, where the Courts extended the exercise of this right to cases in which bills of exchange had been given for the cargo, or a part payment made. But the right of stopping *in transitu* comprehends at present both these circumstances. Thus, where bills given in payment of goods turn out bad, the goods may be stopped *in transitu.* (*o*) Nor will it take the case out of this principle, though the consignor may have indorsed

(*k*) Sweet *v.* Pym, 1 East. 4.

(*l*) Feise *v.* Wray, 3 East. 93.

(*m*) Newsom *v.* Thornton, 6 East. 17.

(*n*) Siffkin *v.* Wray, 6 East. 371.

(*o*) Owenson *v.* Morse, 7 T. R. 64.

Stoppage *in transitu*

over to third persons the bills of exchange which he has received for the cargo from the insolvent consignee. Upon the same principle, (*p*) (the goods being in all cases considered as a lien for the price in the hands of the consignor, till their ultimate delivery,) a consignor may exercise this right, although a part of the price of the goods has been paid by the consignee. So likewise, if a sale be legalized by a licence from the crown, though the vendor be an alien enemy, he may stop *in transitu*. (*q*) And an actual repossession is not necessary, but a *bonâ fide* claim and attempt by the vendor to get the goods will be sufficient to revest this equitable right. (*r*)

Upon a review of all the above principles the rule, as to the person who may stop *in transitu*, may be summarily stated to be, that the vendor, and every one in the immediate character of vendor, namely, a broker buying goods for another on commission, may exercise the right of stopping *in transitu* upon the insolvency of the vendee; but that the original property in the goods must have been in the person who stops *in transitu*; and, therefore, that neither a guarantee for the payment of the price, nor any person who has a mere lien, and who has parted with the possession, can exercise this right. And, finally, that this right of the vendor is not taken away, either by a payment in bills turning out to be worthless, (before delivery of the goods,) nor by part payment of the price. As these are the principal points of the first division of the subject of this Chapter, and as all other rights as to the persons who may stop *in transitu* depend upon them, and must be deduced from an analogy with them, it may not be without use briefly to subjoin the cases upon which the above rule stands, and they will be accordingly found in the note below. (*s*)

(*p*) Hodson *v.* Loy, 7 T. R. 440.

(*q*) Fenton *v.* Pearson, 15 East. 419.

(*r*) Mills *v.* Ball, 2 B. and P. 462.

(*s*) 1. *For the general right of an unpaid vendor to stop in transitu.*

Secondly, What is the legal doctrine of *transitus?* how far does it extend, and where terminate?

What is to be considered as the *transitus* of the goods.

The principle under this head may be summarily stated, namely, that goods are to be deemed *in transit* so long as they remain in possession of the carrier, or of any agent of the carrier, or of any wharfinger, innkeeper, or any other servant of the public, or in any place of deposit connected with the transmission and delivery of them; and, finally, until every thing be done (which is required or necessary to be done previously to the delivery,) by the vendor or his agents; and thenceforth until they arrive at the actual or constructive possession of the vendee.

It is totally unnecessary to state, that goods remain *in transit* so long as they continue in possession of the carrier. The same reason extends to the possession of the wharfinger, the wharf being only a second stage of their carriage. Nor will it make any difference, though the carrier deliver the goods to the wharfinger, as the goods of the consignee; for, in fact, they are *his* goods, subject only to be stopped *in transitu* by the unpaid vendor. In a case in the Common Pleas, (*t*) the goods were sent by sea to a certain wharf, to be forwarded from thence by land to the residence of the consignee; and upon the ship's arrival were delivered to the wharfinger, as the goods of the consignee,

Mills *v.* Ball.

see Lickbarrow *v.* Mason, 2 T. R. 75.

2. *For the insolvency of the vendee being a necessary circumstance*, see the same case, and the Constantia, 6 Rob. 321.

3 *For a broker buying on his own credit on commission having this right*, see Feise *v.* Wray, 3 East. 93.

4. *But that a guarantee or surety for the price cannot stop in transitu*, see Siffkin *v.* Wray, 6 East. 371.

5. *That a person who has a lien, and who has parted with it, cannot stop in transitu*, see Sweet *v.* Pym, 1 East. 6. and 3 East. 100.

6. *That the right of stopping in transitu is not taken away by payment in bills turning out to be bad*, see Owenson *v.* Morse, 7 Ter. Rep. 64.

7. *Nor by part payment*, see Hodgson *v.* Loy, 7 T. R. 440. and Feise *v.* Wray, 3 East. 93.

(*t*) Mills *v.* Ball, 2 Bos. and Pul. 457.

Stoppage *in transitu.*

to be forwarded to him accordingly. Upon the above principle the Court held, that the consignor might stop them *in transit* in the hands of the wharfinger; or, in other words, that the transit was not determined. The same principle extends to the deposit of goods with innkeepers, packers, &c. (*u*) But such wharfinger, packer, or innkeeper, must be an agent of the carrier, or a servant of the public; and such inn or wharf must be a place of indifferent deposit. The wharfinger, packer, or innkeeper, must not be the special agent or servant of the consignee; nor the wharf or inn be the actual place of *last* delivery. And, therefore, in a case where the vendee had no warehouse, or no other place of delivery than the warehouse of the packer, &c., and there was no place of ulterior delivery in view, the *transitus* was considered as at an end, when the goods arrived at such warehouse. (*x*) If the place of delivery belong to the consignee, the delivery is complete and full, and of course the transit at an end.

We have had occasion, in a preceding chapter, to observe, that a chartered ship is, under some circumstances, holden to be a vehicle in the entire possession of the freighter *pro tempore;* whilst, under other circumstances, he is regarded as only having hired the space of the vessel, the possession still continuing in the ship-owner. (*y*) As respects the vendor's right to stop *in transit*, unless the circumstances of possession be very express, the chartered ship will be holden to be in possession of the master; and, of course, the consignor will retain the right to stop *in transit*, in the same manner as if the goods had been delivered on board a *general* ship. (*z*) But where a consignee

(*u*) Hunt and Others *v.* Ward, 3 T. R. 467.

(*x*) Richardson *v.* Goss, 3 B. and P. 119. Leeds *v.* Wright, 3 B. and P. 320, and Scott *v.* Pettit, *Ibid*, 469.

(*y*) See Saville *v.* Campion, 2 B. and A. 503. and Master of Trinity House, &c. *v.* Clark, 4 M. and S. 288.

(*z*) Bohtlink *v.* Inglis, 3 East. 381.

Stoppage *in transitu.*

had continued the chartered party of the same ship for several years, and had always, during that time, manned and victualled it himself; the ship, under such circumstances, was considered, by the Court of King's Bench, to be a vehicle in his own possession; and, as a delivery there was effectually a delivery to him, that the right of stopping *in transitu* by the unpaid vendor was gone. (*a*)

A delivery to the agent of the vendor is, of course, a delivery to himself, and the transit is at an end. And, therefore, where goods were sent by the vendor to the vendee's agent at one place, under an order from the vendee that they should be sent to such place, "to be shipped thence as usual to another place;" it was holden, that the delivery was complete. (*b*) But if the goods, for the sake of some process or preparation, are delivered by agreement between the vendor and purchaser to a third person, and such third person is to return them to the seller, the goods, whilst in his hands, are *in transitu*, and therefore may be stopped by the vendor. (*c*)

As the law gives the unpaid consignor this privilege of stopping the goods before their final delivery; and as the consignor will naturally exercise this right at the last stage of arrival; the Courts will not allow him to be surprised out of this right by the consignee taking possession of the cargo before its arrival. And, therefore, where a consignee went down to some place short of the port of delivery, in order that he might take possession of the vessel before her arrival, it was held by the Court, that the transit was not at an end; and as the consignor had stopped the goods at the last port of arrival, that the stoppage *in transitu* had effectually taken place. (*d*)

(*a*) Fowler and Another *v.* Mac Taggart and Others, Abbott 386. and cited 7 T. R. 442.

(*b*) Dixon *v.* Baldwin, 5 East. 175.

(*c*) Owenson *v.* Morse, 7 T. R. 64.

(*d*) Holst *v.* Pownal and Another, 1 Esp. N. P. C. 240.

Stoppage *in transitu.*

Upon the same principle, any delivery by a carrier under mistake, where the consignor has given timely notice to stop *in transitu*, will not take away the right of stoppage; such delivery being equivalent only to an erroneous delivery to a wrong person. Thus, where a vendor delivered goods to a carrier, to be conveyed to the vendee, but, hearing immediately afterwards of his embarrassed circumstances, gave notice to the carrier not to deliver them: the carrier, however, under some mistake, did deliver them to the vendee, who immediately disposed of part of them, and shortly afterwards became bankrupt. Under these circumstances, the Court held, that such delivery being erroneous, was in fact no delivery; and, therefore, that the vendor was entitled to recover in an action of trover against the assignees. (*e*)

Nor is this right divested by an attachment at the suit of a creditor of the vendee, if the attachment be made before the ultimate delivery of the goods; the goods then attached not being the property of the consignee, as opposed at least to the right of the unpaid consignor to stop *in transitu.* (*f*) And a usage for land-carriers to retain goods as a security for a general balance of accounts due from the consignee will not divest this right of the consignor, upon paying the carriage of the particular goods only. (*g*) Goods deposited at the King's warehouses, on their arrival, for the duties, under 26 Geo. III., c. 59. may be stopped *in transitu*, though they have been claimed by the consignee; such place of deposit, and the time during which it continues, being a stage or interval, as it were, of the transit. (*h*)

But an actual removal of the goods from the place of

(*e*) Litt *v.* Cowley, 2 Mars. 457, and 7 Taunt. 169.

(*f*) Smith *v.* Goss, 1 Campbell, 282.

(*g*) Oppenheim *v.* Russell, 3 B. & P. 42.

(*h*) Northey and Another *v.* Field, 2 Esp. N. P. C. 613.

landing or arrival is not necessary to vest the ultimate possession in the vendee. If he take a constructive possession, such as marking the goods, or exercising any unequivocal act of dominion over them, it will be sufficient to render the delivery complete, and thereby to divest from the vendor the right of stopping *in transit.* And therefore, where an attachment for some inconsiderable sum, as respected the total value of the goods, was laid upon some goods at a wharf or inn, and the assignees of the vendees marked the goods, such act of marking was regarded as a constructive possession. (*i*)

Stoppage *in transitu.*

But as, from the nature of all contracts, an acceptance is necessary to complete and terminate the contract, and as the contract between consignor and consignee, so far as respects the right of stopping *in transitu,* is presumed by law to be suspended till a complete delivery; so a vendee, who may find himself in embarrassed circumstances at the time of arrival, may waive the acceptance of the goods, and leave them for the consignor.

In a case of this kind, a consignor sent goods to a consignee, and a letter of advice inclosing the invoice; the goods were received by a wharfinger on account of the consignee, and he was debited for the charges and expenses. The consignee, however, suspecting himself to be insolvent, and having committed an act of bankruptcy, refused to receive the goods from the wharfinger, and left them in his hands for the use of the vendor. Under these circumstances, the consignor demanded the goods from the wharfinger before the commission issued; and the Court held that it was the duty of the wharfinger to deliver them to him, as the consignor had a full right to stop them; here being no acceptance, and therefore no complete delivery. (*k*)

(*i*) Ellis *v.* Hunt, 3 Term Rep. 464.

(*k*) Mills *v.* Ball, 2 B. & P. 457, and see *ante.*

Stoppage *in transitu.*

Where the vendor takes a receipt from the master of a ship, in his own name, that such goods are taken on board for and on account of himself, although directed to be delivered to certain consignees, to whom he had sold them on credit, there the transit continues until the actual delivery to such consignees. Such a receipt is a restrictive receipt, and the master is not bound to deliver the bill of lading except to the person who can produce the receipt in exchange for it; or, in other words, the vendor, having the receipt in his own hands, may stop the goods in transit, though the master on his own part may have delivered the bill of lading to a *bonâ fide* purchaser. (*l*)

The right of stoppage *in transitu* continues so long as any thing remains to be done to put the goods in a deliverable state according to the contract.

It is another important principle in favour of the vendor's right to stop *in transitu*, that the transit, or in other words the non-delivery, is supposed by law to continue not only so long as the passage of the goods proceeds, but so long as any thing remains to be done on the part of the vendor or his agents, such as weighing, separating, drawing off, sorting, &c.

Therefore, where a vendor had thirty tons of hemp in the hands of his warehouseman, and sold ten of them to a vendee, not giving him possession, but giving him an order to his warehouseman to weigh out and deliver to him such ten tons, and the vendor afterwards stopped the delivery before the weighing, the Court held that he had a right to exercise this stoppage *in transitu*, as the "weighing out" was a thing that remained to be done. And the Court said, "If any thing remain to be done between vendor and vendee, it is no delivery."(*m*)

The effect of this principle of the transit continuing, whilst any thing remains to be done, is seen chiefly to operate where the vendor sells the goods whilst in the hands of his warehouseman, broker, or factor, and the

(*l*) Craven *v.* Ryder, 6 Taunt. 433., and 2 Marsh. 127.

(*m*) Shipley *v.* Davis, 5 Taunt. 617.

Stoppage *in transitu.*

vendee does not immediately remove them. In this case, if any act whatever remain to be done after the contract, the transit is not completed *until such act be done;* and if the buyer become previously insolvent, the goods may be stopped. Thus, if the subject of the sale be in a mass with other matter not sold; for example, if it be part of a liquid contained in a vessel; no delivery, short of the actual separation, will defeat the right of the vendor. (*n*) Nor will it make any difference, though an order to deliver have been given to the wharfingers, and entered in their books, provided something further remains to be done. (*o*) So in all cases the right of stoppage remains, where the goods are not in a deliverable state; and some act, process, or preparation, be necessary to be done by the seller, or his warehouseman, or servant, to make them so. Thus, where a person contracted to sell all his starch, then lying at the warehouse of another, at a certain price per hundred weight, to be paid for by a bill of exchange; and a certain number of days was allowed for the delivery; and the seller wrote an order to the warehouseman to weigh and deliver all his starch to the buyer; and the buyer handed the order to the warehouseman, who weighed a part which the buyer removed, and then the buyer failed before the residue was weighed: it was held, that the seller might lawfully countermand the delivery of the residue. (*p*) So, where a quantity of oil in casks was sold, and according to the course of trade the casks were to be searched by the seller's cooper, the quantity of impure matter to be ascertained by a person attending on behalf of both parties, and the casks to be filled up at the seller's expense, it was held, that the order which had been delivered to the warehouseman might be countermanded before these things were done. (*q*)

(*n*) Wallace *v.* Breeds, 13 East. 525.

(*o*) Busk and Another *v.* Davis, 2 M. & S. 397.

(*p*) Hanson *v.* Meyer, 6 East. 614.

(*q*) Wallace ahd Others *v.* Breeds and another, 13 East. 522, and *ante.*

Stoppage *in transitu.*

Withers *v.* Lys.

In a case sent by the Master of the Rolls to the Court of Common Pleas, the plaintiff in the action, a general merchant, had sold thirty tons of rosin to one Bromer. The rosin was sold through the medium of a broker, whose note was expressed as follows:—"Messrs. Withers and Co., September, 2, 1812. I have this day sold to David Bromer thirty tons of London made rosin, more or less, at 13*s.* *per cwt.*, lying in mats, at the wharf of Lys and Co., payment by a bill at six months."—Signed by the broker. Immediately afterwards, the plaintiff sent an order to their wharfingers (which order they entered in their books,) to weigh and deliver the rosin; upon which the wharfingers gave notice to Bromer that they had received such order from the plaintiffs, and were ready to deliver. Shortly afterwards, Bromer became bankrupt; and the rosin still lying at the wharf, the unpaid vendor demanded it on the one hand, and the assignees on the other. The question was, to whom the wharfinger was bound to deliver. Gibbs, C. J., said, that this case had already been decided in principle, both in the King's Bench and Common Pleas; and whatever difference there might be between those cases and the present, there was no essential distinction. The principle upon which both Courts have decided is this; that the order sent by the vendor to the wharfinger to deliver the goods is sufficient to pass the property to the vendee, provided *nothing remains to be done but to make the delivery.* If it be necessary by the terms of the contract, or by the order to the wharfinger, that any thing should be done previous to the delivery, the transfer is not complete till *that thing* be done. It is impossible to say, in the present case, that something was not to be done. The order was to weigh and deliver; that act, therefore, which was to precede delivery, not having taken place, the property did not pass to Bromer. (*r*)

(*r*) Withers and Others *v.* Lys and Another, Holt's N. P. 18.

Stoppage in transitu.

The circumstances of another case were more peculiar, and appear to be at first rather remote from the principle above alleged. A sugar-refiner entered into a contract with a general merchant, one Kruser, to sell him two hundred hogsheads of sugar, fifty of which were described to be of one price and quality; fifty of a different price and quality; and the remaining hundred, different from the two preceding fifties. The sugars were to be delivered free on board a British ship; and were to be taken by Kruser from the vendor's warehouse within four months, and to be paid for within that time. About a month after the contract, Kruser, being in embarrassed circumstances, not having then named any British ship on board which the sugars or any of them should be delivered, nor having paid for them, and no part having been delivered, contracted to sell to a third person, one Austen, fifty hogsheads of double loaves, and gave him an order on the first vendor to receive them. Austen gave notice to the first vendor of his intended contract; and enquired whether he had fifty hogsheads of sugars belonging to Kruser, and whether he (Austen) could safely purchase them of Kruser, and pay him the price; to which the first vendor answered in the affirmative, and said, that he had the fifty hogsheads, and would deliver them. Austen, thereupon paid Kruser the price at which he had contracted for them, and some time after required the first vendor to deliver them. Being unable to obtain payment from Kruser, the first vendor refused to make this delivery, whereupon Austen brought his action. It was urged for him upon the trial that, although ordinarily a vendor has a right to detain the goods which he contracts to sell until he is paid for them, yet that the original vendor in this case having told a sub-purchaser that he might safely buy, and pay Kruser, could not afterwards set up any lien. For the original vendor it was objected, that no specific fifty hogsheads had been so separated from the defendant's stock, as to enable the plaintiff to recover in trover. (*s*)

Austen v. Craven.

(*s*) Austen *v.* Craven and Another, 4 Taunt. 644.

Stoppage *in transitu.*

And the Court acceded to this principle, Mansfield, C. J. saying that trover could not be maintained but for specific goods; and that as there was here no separation from the general stock, this action could not lie against the first vendor. But, though this case was decided upon the principle of its subject matter not being within the form of the action of trover, there is no doubt that the decision would have been the same, if the right of stopping *in transitu* in such circumstances had been the question under consideration. For the original vendor had not parted with the possession; the goods were, therefore, still in transit. As there had been a falsehood (amounting to a wilful or grossly negligent deceit,) in the representation to Austen that he might safely purchase, an action on the case might certainly have been sustained: but there was still nothing in that representation by which the original vendor divested himself of his lien; nor was there any thing in it by which he either parted with the possession, or completed the delivery.

White *v.* Wilks.

Upon the principle in the above case, where a merchant had sold ten tons of his stock, consisting of several large quantities of oil, in divers cisterns, in divers places, it was holden that trover would not lie for it, because there was no separation of the part sold from the rest of the stock; so that the contract did not attach upon any particular parcel of oil; nor had there been any actual delivery. (*t*)

(*t*) White *v.* Wilks, 5 Taunt. 177. The case of Whitehouse *v.* Frost, 12 East. 644. may appear, on the first view, inconsistent with some of the propositions stated in the text, and at variance with other cases; but a closer inspection will warrant the principles laid down, and reconcile the decisions. In the sale of the oil, in Whitehouse *v.* Frost, it was, from the date of the contract, to be at the *purchaser's risk.* Next, the specific oil was determined, and contained in a particular place and vessel named. Dutton and Bancroft, the original vendors, had made a complete transfer of the oil to the Frosts, the first vendees; they (D. and B.) had received the price, and executed the contract between those parties; and, therefore, no right of

Thirdly, What shall defeat the right of the consignor to stop *in transitu.*

In the first place, the assignment of a consignee of a bill of lading, *bonâ fide*, and for a valuable consideration, will transfer the property in its contents to the assignee, so as to divest the right of the consignor to stop *in transitu.* The reason of this principle is in the transferable nature of bills of lading; for, as the custom of merchants has rendered them transferable instruments, (whether indorsed specially or in blank) and thus put them within the analogy of bills of exchange, there is the same reason that bills of lading and bills of exchange should be considered in themselves as sufficient proof of property in their holders; and that the dealings and intercourse of trade should not be crippled by imposing an obligation on those who receive them to examine into the title of those who hold them.

What shall defeat the right of stoppage *in transitu.*

The indorsee of a bill of lading is manifestly entrusted with the power of selling the cargo. They do not deal with him, therefore, beyond his commission, who purchase of him; and if he betray his trust, it is consonant with every principle of equity, as well as of law, that the loss should fall on the principal who selects him, and who trusts

stoppage *in transitu* could exist. When the Frosts sold to Townsend (whose interests the plaintiffs claimed as assignees) they gave an order on D. and B. to deliver to him; D. and B. indorse their acceptance on this order; and thereby, in the language of the Court, "attorn to the sale, and become bailees to Townsend." Now, although something remained to be done between Townsend and D. and B., who had the custody of the oil, before Townsend could be put in the exclusive possession of the part sold; yet, as between Townsend and the Frosts, nothing remained to perfect the sale; the order of delivery being simply *to deliver.* D. and B., therefore, having admitted, by the acceptance of the order, that they held the oil as the property of Townsend, he had a right to take it without the interference of the Frosts. In a word, the question was between different parties.

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him, instead of upon one who deals with him only as a buyer with a seller. It is the breach of trust of a servant betraying his master, or an agent his principal, or at least a natural consequence of trust and commission, and therefore belonging to him who trusts and employs. In all these cases, namely, those of an indorsement of a bill of lading, before the arrival of the consignment, or at least before the exercise of the right of stoppage *in transitu*, the law has necessarily to choose out of two persons upon which the loss shall fall;—whether upon the unpaid vendor, or the *bonâ fide* indorsee. Accordingly, the law selects, as the object of this loss, the person who is under the strongest equity to sustain it. It chooses the party to the original trust, instead of a stranger;—it selects a principal who first trusted;—a creditor who first gave credit;—a person who put another in the condition of dealing with a third person, as proprietor, instead of a person who has no other concern with the transaction than going into the market with the money in his hands, and buying of one whom he sees to possess the usual *indicia* of property, and the power of selling.

But these principles, obvious as they may now appear, were admitted very slowly into the practice of the Courts. The first occasion of their being considered was a case in equity, decided by Lord Hardwicke;—a decision, said Lord Kenyon, (*u*) "upon which the doctrine of stopping *in transitu* is bottomed; Lord Hardwicke having established in that case the very wise rule, that the vendor might resume the possession of goods consigned, before delivery, in case of the bankruptcy of the vendee." This case, however, has sometimes been very strangely adduced, as the origin of, and direct authority for, the effect of an assignment of a bill of lading to divest the right of the unpaid vendor to stop *in transitu*. A correct statement of the circumstances (but which correct statement must be

(*u*) In Ellis and Hunt, 3 T. R. 467.

sought in the observations of the Judges, where they had occasion to speak of it, and not in the original reporter;) will shew that it is a direct authority for the contrary.

Stoppage *in transitu.*

Snee *v.* Prescot.

The facts of the case, thus amended, appear to have been as follow:(*v*) Snee and another, plaintiffs in the suit, were the assignees of one Tollet, a bankrupt; and the bill was filed by them against Prescot, a partner in the house of Raguenau and Co., the consignors of the goods in question, Dawson, the master of the ship, and Julian and Le Blon the assignees of the bill of lading. Tollet, having consigned some wools to Raguenau and Co., at Leghorn, gave orders to barter them for some Italian goods. Raguenau and Co. accordingly advanced considerable sums in the purchase of silks, which they consigned to Tollet, and shipped at his risk and on his account, at the same time sending him bills of lading. Tollet, upon receiving these bills of lading, assigned them for money advanced, to Julian and Le Blon; and a short time afterwards, and before the arrival of the cargo, became bankrupt. Upon this event Prescot, one of the partners of Raguenau and Co. claimed to stop the delivery *in transitu* and demanded the goods of the master. Under these circumstances Lord Hardwicke, in his judgment, said, "As the indorsement of the bill of lading by Raguenau and Co. is in blank, to the order of the consignors, it is rather in the nature of an authority to receive, than any thing more; and the evidence on the part of the defendants, as to the custom of merchants, (which greatly preponderates against the plaintiff's evidence) is, that indorsements in blank are made to reserve a power of varying the consignment, where there was any doubt about the solvency of the consignee." Upon the whole of the circumstances, the justice of the case, and the evidence of the custom of merchants, his Lordship decreed a sale and account; and that the claim of Prescot

(*v*) Snee *v.* Prescot, 1 Atk. 245. But see the facts corrected by Buller, in 1 T. R. 73.

Stoppage in transitu.

and his partners (Raguenau and Co.) should be first satisfied. In this case, therefore, Lord Hardwicke manifestly decided against the effect of an assignment, before delivery, to divest the unpaid vendor's right of stopping in transit; for if he had been of opinion that the assignment of the bill of lading transferred the property, he must have decreed that the indorsees should have been first paid the money advanced by them upon the bill of lading, and that the surplus only should have been paid to Prescot and his partners; instead of which he gave a priority to the consignors. But it is equally evident, that his decision proceeded upon a supposed difference between a full indorsement of a bill of lading, and an indorsement in blank, a difference now no longer acknowledged. This case, therefore, may be an authority for the doctrine of stopping *in transitu*, but certainly not for the assignment of bills of lading.

Wright *v.* Campbell.

In Wright *v.* Campbell (*x*) the effect of such an assignment came more immediately before the Court; the factor of the consignor having indorsed the bill of lading to a third person. In this case Lord Mansfield said, "If the goods are *bonâ fide* sold by the factor at sea, (as they may be where no delivery can be given,) the sale will be good; the vendee shall hold them by virtue of the bill of sale; and the owner can never dispute with the vendee, because the goods are sold *bonâ fide*, and with the owner's authority." This case, therefore, would have decided the question, had not some circumstances appeared, upon the ground of which the Court sent the cause to a new trial to determine the good faith, or fraud, of the assignment. This was followed by two other cases, (*y*) but in neither of which the effect of such an assignment came immediately into consideration, though the circumstances in both

(*x*) 4 Burr. 2046, and 1 Bl. Rep. 628.

(*y*) Caldwell *v.* Ball, 1 T. R. 205, and Hibbert *v.* Carter, 1 T. R. 745.

afforded the Court an occasion of observing that bills of lading were assignable by their nature, and that by indorsement the property vested in the assignee. The point, however, at length came directly before the Court, upon its own merits; and received that decision upon which the law of the assignment of bills of lading now stands.

Stoppage *in transitu.*

Lickbarrow v. Mason.

A mercantile house, (Turing and Co.) had shipped goods at Middleburgh, for Liverpool, by the order of one Freeman, of Rotterdam; and drawn bills of exchange upon him for the price; and taken from the master three bills of lading for delivery of the goods to order or assigns, two of which they indorsed in blank; and transmitted them, together with an invoice, to Freeman, at Rotterdam, who sent them and the invoice to the plaintiffs, at Liverpool, in the same state in which he received them, that they might receive and sell the goods on his account; and drew bills of exchange upon them nearly to the amount. Freeman and the plaintiff accepted the bills of exchange drawn upon them respectively; but, between the ship's departure and her arrival at Liverpool, Freeman became a bankrupt, and absconded; and Turing and Co. sent another of the bills of lading to the defendants, indorsed specially for delivery to them; and they thereupon obtained the goods from the master. Turing and Co. afterwards paid the bills of exchange drawn by them upon Freeman, and the plaintiffs paid those which had been drawn upon them by Freeman. The Court, after solemn argument and deliberation, held, that by an assignment made by the consignee *for a valuable consideration*, and without notice to the assignee that the goods were not paid for, the property was absolutely transferred to the assignee; and that the consignor was, by such an assignment, deprived of the right to stop the goods *in transitu*, which, as against the original consignee, he might have exercised. From this decision an appeal was made by writ of error to the Judges of the Courts of Common Pleas

Stoppage *in transitu.*

and Exchequer, (z) who reversed the judgment of the Court of King's Bench; holding that the assignment gave to the assignee no other right or title than that which the consignee himself possessed, and consequently that the consignor had a right to stop the goods, and prevent their delivery to the assignee. This judgment was by a second writ of error brought before the House of Lords; but their lordships, thinking the facts of the case were not laid before them in such a manner as to warrant a decision of the point of law, directed the cause to be tried again by a jury in order to remedy that defect. It was accordingly tried again; and the Court of King's Bench again decided the case, without argument, in conformity to the first decision of that court. (a)

It is now, therefore, an established principle, that bills of lading are transferable documents of property, and that the assignment of them by consignees divests the rights of the consignor to stop *in transitu.* Nor is there any difference, as above observed, whether the indorsement of the bill of lading by the consignor be in blank, or nominally to the consignee; one of the points decided in Lickbarrow and Mason being, that by the custom of merchants bills of lading, expressing goods to have been shipped by any person to be delivered to order or assigns, are, before the ship's arrival, negotiable and transferable by him to any other person by his indorsing his name, and delivering or transmitting the same, so indorsed, to such other person; and that by such indorsement, delivery, and transmission, the property is transferred, provided the transfer be *bonâ fide.*

In the previous Chapter, on Bills of Lading, we have already had occasion to consider the effects of their in-

(z) 1 H. Bl. 537.

(a) Lickbarrow and Others *v.* Mason, 2 T. R. 63. And see *ante*, Chapter on Bills of Lading, *passim.*

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dorsement, and under what circumstances its effect will be varied according to the different character of the consignee, whether purchaser, correspondent on mutual credit, or factor. But, in all cases of such indorsement before delivery of the goods, the only question will be, whether such assignment be *bonâ fide*, or fraudulent; and it will make no difference, as observed in that Chapter, whether such indorsee of a bill of lading should or should not know that the original vendor is not paid. But if there be any fraudulent dealing, or connivance between the consignee and the indorsee, for the purpose of defeating the right of the consignor, such a transaction will be a fraud; and, of course, will be deemed a void contract. (*c*) In a case which was tried in the King's Bench, whilst Lickbarrow and Mason was pending in the House of Lords, the bill of lading was transferred by the consignee for a consideration short of the value, without notice of its contents; and the indorsee afterwards, with notice of that fact, agreed that himself and the consignee should be partners in the goods. The Court held, that the indorsee, under these circumstances, had waved his original right; and, having become a partner only with the consignee, must stand in the same right with him as being subject to have the goods stopped *in transitu.* (*d*)

In the same Chapter (*e*) it has been stated, that though a factor may sell the goods, whilst at sea, by bill of lading or bill of sale, he cannot pledge the bill of lading, being an agent commissioned to sell, and not to pledge. But in all other cases an indorsement, or sale by a factor, has the same character as an indorsement by a consignee for value.

A defective indorsement

In a case before Lord Kenyon, an Irish mercantile house

(*c*) Cumming *v.* Brown, 9 East. 506. See *ante*, Chapter on Bills of Lading.

(*d*) Solomons *v.* Nissen, 2 T. R. 674.

(*e*) See Chapter on Bills of Lading, and Newsom *v.* Thornton, 6 East. 17.

may be supplied by evidence of intention to indorse.

had sent goods from Ireland to their factors in London, accompanied with a bill of lading defectively indorsed. The factors, upon this, applied for an indorsement; and received a letter in reply, that the defective indorsement was an error, and they would send them a proper indorsement. Upon this intimation the factors sold the goods; but were, subsequently, unable to pay the bills drawn by the Irish House. As the goods had not yet arrived, a third person, a correspondent of the Irish house, took up the dishonoured bills for the credit of the drawers; and, receiving another bill of lading, claimed to stop the goods *in transitu.* But the Court held, that the sale and indorsement of the bill of lading by the factors had been sufficient, and that their vendees were entitled to the goods. (*f*)

But though the Court will supply this defective indorsement, or even, perhaps, a non-indorsement, where there is a strong equity on the side of the indorsee, it will certainly not assist such defective, or non-indorsement, where the equity, and strong justice of the original consignor, are the other way. In a case before Lord Ellenborough, a wine merchant in London had ordered some pipes of wine of a house at Oporto; and, upon the goods being shipped according to his orders, had received a bill of lading from them, expressed to be delivered to their order and assigns, (order and assigns of the Oporto firm,) but which they had not indorsed. The consignee sold the goods on this bill of lading before their arrival; but having become bankrupt, both before their delivery, and before payment of a bill which he had accepted on notice of shipment; Lord Ellenborough held, that he could not effect a sale on such an indorsement, and that the right of the consignor to stop *in transitu* was not divested. (*g*) It is unnecessary to say more in explanation of the principle of this decision, than to observe, that a bill of lading of this de-

(*f*) Dick *v.* Lumsden, Peak. N. P. 189.

(*g*) Nix *v.* Olive, Abbott 403.

scription is exactly of the same nature with a promissory note, payable to the maker's own order; and of course, not being indorsed, was not transferred to the holder. The principle of the indorsement of bills of lading transferring the goods is founded upon their transferable nature, and the mischievous impediment it would be to commerce to suffer *bonâ fide* purchasers for a valuable consideration to be defrauded by defects of title, which they had no means of ascertaining. But a bill of lading of this kind could deceive no one.

Stoppage *in transitu.*

If there be more bills of lading than one, the master will discharge himself by delivering the goods to the person to whom the consignor first consigned them. (*h*) But where the claims involve any difficulty, as in the case of the bankruptcy of the consignee, and his alleged indorsement previously to an act of bankruptcy, or in the case of stopping *in transitu*, the most prudent course for the master is, either to obtain a full indemnity from the person to whom he delivers, or to deposit the cargo in a place of safety, and apply to the Court of Chancery.

We have already observed that, although the goods should be short of their actual destination, if they, nevertheless, come into the constructive possession of the vendee, by a delivery to his servant, agent, or warehouseman, the transit will be deemed at an end. Thus a delivery to a warehouseman, to whom the vendee pays warehouse rent, will take away the right to stop *in transitu*, though the goods have not reached their ultimate destination. (*i*) So, if the vendor receive warehouse rent from the vendee for the goods remaining in the warehouse beyond the period at which they ought to be removed. (*k*) And where, with the privity of the vendor, the wharfinger,

(*h*) Caldwell *v.* Ball, *ante.*

(*i*) Richardson *v.* Goss, 3 B. and P. 127.

(*k*) Hurry *v.* Mangles, 1 Campb. 442. and Wright *v.* James, 4 Esp. 82.

Stoppage *in transitu.*

in whose custody the goods are, charges the vendee with warehouse rent, such wharfinger will hold the goods in trust for the vendee, and the right of stoppage *in transitu* will be gone from the vendor. (*l*) And if the vendee receive from the vendor an order for the delivery of the goods which he lodges with the wharfinger, (the goods being in a *deliverable* state, and nothing remaining to be done but to deliver them,) the same effect is produced, though no transfer be made in the wharfinger's book. (*m*) So the change from the mark of A. to B., in bales of goods in a warehouse by the direction of the parties, was held by the house of Lords, in a modern case, to operate as an actual delivery. (*n*) In the same manner when timber, to be paid for by a bill at a future day, was marked by an agent of the vendee, whilst lying at the wharf of the vendor, with his concurrence and assent, and a part delivery was made; the Court of K. B. decided, that the right of stoppage *in transitu* was gone, as well as to that part delivered, (though it should not have reached its ultimate destination,) as to the residue in the vendor's possession. (*o*) In this case it is to be observed, that two things concurred to divest the right of the vendor, a *part* delivery, and a mark put on the timber by the *consent* of the vendor. So the marking of goods by purchasers at the time of the contract was held to take the sale of the goods out of the statute of frauds, and to be a delivery and taking possession by the vendees. (*p*) But this alone, perhaps, would not defeat the right of stoppage *in transitu*, as it might be an act for indicating the subject matter of property merely, and not of taking possession. So, likewise, a part delivery, under a bill of lading to a sub-vendee, on the arrival of the ship, has been held equivalent to a full delivery. So if the assignee of the vendee put his mark upon the

(*l*) Harman *v.* Anderson, 2 Campb. 243. cited 14 East. 593.

(*m*) *Ibid.*

(*n*) Per Lord Ellenborough, cited in Stoveld *v.* Hughes, 14 East. 313.

(*o*) *Ibid. ibidem.*

(*p*) Anderson *v.* Scott, 1 Campb. 325.

goods whilst they are at an inn, in their way to the vendee, this will be a taking of possession, to defeat the right of stopping *in transitu*; (*q*) for the goods need not come to the corporal touch of the vendee. Stoppage *in transitu.*

(*q*) Slubey *v.* Hayward, 2 H. Black. 504. and see Hammond *v.* Anderson, 1 New. Rep. 69. Compare this case with Hanson *v.* Meyer, 6 East. 614. before cited. The distinction seems to be, that, in the former case, part of the cargo was delivered in the name of the whole, the goods having reached their ultimate port of destination, and nothing remained to be done, previous to the delivery of the residue, but the mere *act* of delivery. But in Hanson *v.* Meyer, though part of the starch was delivered, the undelivered residue was yet to be *weighed*.

CHAPTER IX.

OF SALVAGE.

Of Salvage.

As average, in its more proper signification, is a compensation amongst the joint sharers in a venture to one who has suffered more than his proportion for the common good; so salvage is a compensation for the safety of the ship or cargo, paid to those by whose labour and courage they have been preserved from wreck, or recovered after capture. Both average and salvage are, therefore, incidental and extraordinany obligations, and only become due upon some occasion of loss by perils of the sea, or war.

As ships are saved from extreme dangers by the courage, as well as the labour, of those who afford their assistance; and as the nature of the service renders it nearly as perilous to persons who aid as to those who are aided, it is manifest that a mere compensation for the labour employed would neither be a sufficient inducement nor even a just remuneration. The rate of salvage, therefore, necessarily includes some consideration of the nature of the service, as well as payment for actual labour. Under these circumstances the rate of salvage is, in most cases, necessarily uncertain. It is to be estimated by the labour employed, by the danger encountered, and by the value of the subject saved. But none of these qualities is sufficiently definite to admit of any general rule. In some few cases, indeed, where the degree of peril and labour can be previously estimated, the rate may be regulated by a law; but in the greater portion it must be left open, and can only be settled either by the consent of the parties or by suit, in law, equity, or proceedings in the admiralty.

The twofold occasion of salvage, which necessarily arises either from the perils of the sea, or from the accidents of war, leads to a natural distribution of the subject into the two heads of wreck and capture. But before we proceed to consider it severally under each of these divisions, it may be useful to advert to some general principles which belong in common to both these divisions. Of Salvage.

It is first to be observed, that the law never loses sight of the principle, that the state itself has an interest in the maintenance and encouragement of great maritime and mercantile concerns, and that shipping and seamen are intimately connected with our national defence. Under this feeling, in Courts of law and admiralty the law of salvage is at once liberal towards salvors; and on the other hand, is jealous and vigilant to protect the ship-owner and merchant from exorbitant claims made under the necessity of the case. In order to unite both these purposes, the legislature has passed several laws for regulating the rewards to be given to salvors; and where the complicate circumstances of the case do not admit of any previous definite sum, the law has appointed arbitrators to apportion the reward according to the equity of the occasion. But as many of these cases may exceed an ordinary degree of difficulty, as they may arise upon the high seas, as well as upon the coast; and, as the parties may justly require a tribunal of more knowledge and judgment than a bench of two or more magistrates; the law has very wisely reserved the jurisdiction both of the Common Law Courts, and the Admiralty, in most of the salvage acts. In some cases, indeed, as will be seen in the sequel of this Chapter, the decision of the Justices under the act is final; but in others, the jurisdiction of the Admiralty is entire; and, if the act meddle with the subject-matter, it is either only to give the parties an option of an easier remedy, or to fix some term (as in the prize acts,) beyond which the admiralty, in the cases within the acts, must not extend the reward to the captors.

Of Salvage.

The jurisdiction of the Courts of law is more abridged than that of the admiralty by the several acts of salvage; but it is a principle that this jurisdiction is reserved where it is not expressly taken away.

In cases arising on the high seas, that is to say, not so immediately off the coast, that the salvors can be of the description of persons mentioned in the acts of Anne, and George II., and III., the determination of salvage almost necessarily belongs to the Court of Admiralty. In all these cases, if the parties cannot agree amongst themselves as to the rate of salvage, the plaintiff must resort to the Court of Admiralty; on which occasion the most prudent course for the defendants is, to tender, in the first stage of the cause, *by act of Court*, and not personally and verbally to the claimants, a specific sum for the salvage, accompanied by an offer to pay the costs incurred. The Court will then consider of the sufficiency of the sum tendered; and if it shall be thought sufficient, will make the party who refuses the offer liable, not only to his own costs, but also to the costs of the other side, if it should appear that the proceedings have been vexatiously pursued. (*a*)

If a person get possession of goods, or save them by his own labour, after the owner has abandoned them, the common law allows him to retain possession till the owner shall pay him a due compensation for his trouble. (*b*) But if a ship be cast on shore, and the master, his crew, or any persons employed by them are at hand, to save and take care of the property, the lord of the manor cannot entitle himself to salvage by interposing to secure it, contrary to the owner's express dissent. (*c*) And if one set of persons have taken

(*a*) The Vrow Margaretha, Jacobs, 4 Rob. 103.

(*b*) Hartford *v.* Jones, 1 Lord Raym. 393., and Baring and others *v.* Day, 8 East. 57.

(*c*) Sutton *v.* Buck, 2 Taunt. 302.

possession of a vessel abandoned at sea, and are endeavouring to bring it into port and save it, another set have no right to interfere with them and become participators in the salvage, unless it appears that the first would not have been able to effect their purpose without the aid of the others. (*d*) Of Salvage.

Where persons claim as joint salvors, having dispossessed the original salvors, it is incumbent on them to shew, if not an actual, at least an apparent, necessity for their intrusion. Merchants ought not to be charged with a higher rate of salvage on account of an unnecessary interference of such second salvors; and when such intrusion was not warranted by law, and no necessity shewn, the Court of Admiralty held, that they were not entitled to any reward for services they might have actually performed.

The rule adopted by this Court, in order to hold out sufficient encouragement, is to give liberally when the property is large; and, when the property is small, according to the danger. In a case, therefore, where the merits of the salvors were very considerable, the Court of Admiralty decreed one-tenth, as well as payment of the expences of the salvors. (*e*)

The crew cannot claim salvage.

As respects crew and passengers, they can in no case be either salvors or joint-salvors. The crew cannot have any claim to salvage, because it is their duty to protect the ship and cargo through all perils; and the whole of their possible service is pledged to the master and owners. The same reason extends, in a great degree, to passengers, who share the peril, and must share the duty. But if a passenger exceed what may fairly and reasonably be expected of him as his portion of common labour to a common peril and its consequences; if in the hour of danger,

Passengers, under certain circumstances, may become entitled to salvage.

(*d*) The Maria, Kilstrom, 1 Edw. 175. (*e*) Blendenhale, Dod. 414.

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for example, he assume the command of a ship abandoned to him by the master and crew, and by his skill and labour bring her safely into port, he will be entitled to a reward in the nature of salvage, and the Court will award it liberally. (*f*) In the case to which we here allude the passenger had been himself a naval captain, and took the command of the vessel at the special instance of the master and crew, under circumstances of extreme danger. He succeeded in bringing the vessel into port; the owner offered him 200*l*. for this service, but the Court and jury afterwards gave him 400*l*.

The rate of salvage on derelict is discretionary by modern practice in the Court. The ancient rule of giving a moiety *de jure* to the finder is overruled by later practice.

By the French law one-third is given; by our own law, as administered in the Court of Admiralty, the reward is apportioned to all the circumstances of the case. (*g*) The Court of Admiralty, as we have before said, has a special jurisdiction over the subject where the salvage is performed at sea. In this case, the Court will fix the sum to be paid, adjust the proportion, and take care of the property pending the suit: or, if a sale be necessary, direct a sale to be made, and divide the proceeds between the salvors and the proprietors according to equity and reason. (*h*)

Of the proceedings of the Court of Admiralty in cases of salvage.

As to the persons who are to contribute to salvage, the reward must be paid by those who receive the benefit of the service. Salvage is a compensation to the salvors, not merely for the restitution of the property which has been made by them to the prior owners, (for that is properly an act of mere justice on their part,) but for the risk and hazard incurred by the salvors, and for the

(*f*) Newman *v.* Walters, 3 B. and P. 612.

(*g*) Aquila, Lunsden, 1 Rob. 37.

(*h*) The William, Beckford, 3 Rob. 355.

beneficial service they have rendered the former owners in rescuing their property from the danger in which it was involved. The persons, therefore, to contribute to salvage, are the persons who would have borne the loss, had there been no such rescue, and who, of course, reap the benefit of such rescue. Of Salvage.

In a recent case before the Court of King's Bench, a ship was let to freight, from London to Lima, under a charter-party, at so much per ton per month, payable after the ship should be reported at the custom-house in London. The ship arrived safely at Lima, and delivered her outward cargo: she then took a homeward cargo, and sailed for London; but was captured, re-captured, and finally arrived. Certain expences were incurred in obtaining restitution of the ship and cargo, and salvage was decreed to the recaptors; the proceeds of the homeward cargo fell short of the freight due to the owners. Under these circumstances the question was, who was liable for the payment of the salvage, and the expences of obtaining restitution; whether the ship-owner or the freighter, or both; and in what proportions. As to the salvage, the Court decided that the ship-owner alone was liable, since salvage is due from those alone who are benefitted by the recapture. Here, had there been no re-capture, the freighter would not have been liable for freight, since the ship could not then have been reported in London, upon which condition only was it payable. By the re-capture he was made liable. As respected the other expences, the Court was of opinion, that the freighter alone was liable for so much of the charges as were paid to obtain restitution of the cargo, since he alone was benefitted by the restitution. Had the cargo never been restored, the ship-owner would not have suffered, since his freight was payable, not on delivery of the cargo, but on reporting in London; it was, therefore, immaterial to him if he came home in ballast: but the freighter Cox *v.* May.

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was benefitted, since thereby he acquired a fund wherewith to discharge a portion of the freight. (*i*)

Salvage not to be confounded with acts of pilotage.

The Court will not suffer salvage to be confounded with mere acts of pilotage. (*k*) But, in cases of ships in distress, the Admiralty Court gives a liberal allowance; and, where it is not restrained by any positive enactment, will take all the circumstances into its consideration, such as the labour and peril of the service, the promptitude and alacrity of the salvors, the value of the ship and cargo, and the degree of danger from which they have been rescued. (*l*) Thus, where the distress was great, the value of the property recovered 17,604*l.*, and the salvors numerous, 1,300*l.* was given. (*m*) In a case of distress, where the service rendered was small, the Court deemed 50*l.* to be sufficient. (*n*)

Equitable rules in computing salvage in the Admiralty Court.

In a case of derelict, where the danger was inconsiderable, the Court gave two-fifths. In another case, where the enemy abandoned a prize ship after capture, the Court allowed the recaptors one-sixth, as for recapture of a derelict. (*o*) In another case, where the service was attended with great danger, the Court gave two-thirds of the whole value; a sum greater than the amount for which the action was first entered. (*p*) The freight will be included in the value of the property upon which salvage is given in cases only where the voyage has been actually commenced, and the freight is in the course of being earned. (*q*)

(*i*) Cox *v.* May, 4 M. & S. 152.

(*k*) Joseph Harvey, Paddock, 1 Rob. 306.

(*l*) The Sarah, 1 Rob. 312.

(*m*) William Beckford, Muirhead, 3 Rob. 355.

(*n*) Vrow Margaretha, Jacobs, 4 Rob. 103.

(*o*) Fortuna Quest, 4 Rob. 193; and John and Jane, Askew, 4 Rob. 216.

(*p*) Jonge Bastiaan, Steyling, 5 Rob. 322.

(*q*) Dorothy, Forster, Sowden, 6 Rob. 68.

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Salvage is not limited by the prize acts, where a ship has been voluntarily abandoned by the enemy; and in one case a moiety was given. (*r*) Where a ship has been rescued from the damages of the sea as well as the hands of the enemy, the Court will go beyond the proportion limited by the act of Parliament, and give an additional reward for civil salvage as for a separate service. (*s*)

Of salvage in case of wreck.

Having thus briefly observed upon the rules and principles common to salvage through all its species, we shall now proceed to consider it under the two heads into which we have previously distributed it; salvage in the case of wreck, and salvage in the case of recapture.

And, first, as to salvage in case of wreck:—The legislature has, at different times, passed several successive acts for regulating and encouraging aid given to ships in distress, and for the compensation to be paid by the owners in case of salvage. The first of these in order, is a statute passed in the reign of Anne, which, however, is confined to the case of assistance rendered to ships in distress, by or under the direction of certain public officers and persons therein mentioned. This act was followed by another statute, passed in the reign of George II. by which the first act was in some respects improved, and which also provided for the case of assistance *voluntarily given* by persons not employed for that purpose. The provisions of this act have been amended and enlarged by four acts of his present Majesty, which provide for the case of assistance *given at the request of the persons belonging to the ship*, without the intervention of the public officers or persons mentioned in the *first* statute; and also contain several regulations applicable to minor services, and cases not within the former statutes. (*t*)

12 Anne, st. 2. c. 18.

(*r*) Lord Nelson, Edw. 79.

(*s*) Louisa, Higginbotham, Dod. 317.

(*t*) The several acts of salvage are as follows:—12 Anne, stat. 2. c. 18. 26 Geo. II. c. 19. 48 Geo. III. c. 130. sec. 21, and 22. 49 Geo. III. c. 122. sec. 32. 52 Geo. III. c. 159. and 53 Geo. III. c. 87.

Of Salvage. It is necessary to add, that these statutes do not apply to the Cinque Ports, which are governed by regulations which we shall notice after these more general enactments. With this observation we shall proceed to enumerate the leading provisions of the above acts for the regulation of salvage.

The first regulation under these statutes is, that in all parts of England, except the Cinque Ports, all sheriffs, deputy sheriffs, justices of the peace, and all mayors, bailiffs, and other head officers of corporations and port towns near the sea, coroners, commissioners of the land-tax, constables, headboroughs, tithingmen, and officers of the customs or excise, upon application made to any of them, by or on the behalf of the chief officer of any vessel belonging to the King's subjects, *or others*, in danger of being, or actually being, stranded or run on shore, are empowered and required to command the constables of the ports nearest to the coast to call together as many men as shall be necessary to the assistance and for the preservation of the distressed ship and its cargo; and if any other ship belonging to the King or his subjects happens to be riding at anchor near the place of distress, the officers of the customs, and constables, or any of them, are empowered and required to demand of the superior officer of such ship, assistance by his boats, and such hands as he can conveniently spare; and if such superior officer refuses or neglects to give such assistance, he forfeits 100*l.*, to be recovered by the superior officer of the ship in distress, with costs of suit, in any court of record. (*u*)

12 Anne, st. 2. c. 18.

And, in order to prevent any hindrance or embarrassment in the manner of rendering such aid, it is enacted in the same act, that the master of such vessel may repel by force, or may arrest and take before any two justices of the peace, all persons who shall enter the ship without

(*u*) 12 Anne, stat. 2. c. 18. sec. 1.; and 26 Geo. II. c. 19. sec. 9.

leave of the officer of the customs, his deputy, or the constables, or of the captain, or other officer of the ship; and may repel or arrest all such persons as shall molest them in the saving of the vessel or cargo; or shall take out and deface the marks of any bale of goods; and all persons who are admitted to assist the ship, shall conform, in the first place, to the orders of the master, or other officers or owners, or the persons employed by them; and, for want of their presence and directions, to the orders of the persons authorized to execute these statutes in the following subordination, as they happen to be present, namely, officer of the customs, officers of excise, sheriff or his deputy, justice of the peace, mayor, or chief magistrate of a corporation, coroner, commissioner of the land-tax, chief constable, petty constable, or other peace officer; under the penalty of *5l.* for wilful disobedience of such orders, to be levied by warrant of a justice. (*x*). Of Salvage.

And, for the due settlement of the compensation to be made as salvage, it is provided, that the officers of the customs, master of any ship, and all others who shall act or be employed in the preservation of ship or goods, shall within *thirty days* be paid a reasonable reward by the master, mariners, or owners of the ship in distress, or the merchant whose ship or goods shall be saved; and, in default, the ship or goods saved shall remain in the custody of the officer of the customs, or his deputy, until the persons employed shall be reasonably gratified, or good security given for that purpose to their satisfaction. And in case, after such salvage, the superior officer, mariners, or owners of the ship saved, or merchant whose goods shall be saved, shall disagree with the officer of the customs, or his deputy, touching the monies deserved by any of the persons employed, the commander of the ship saved, or owner of the goods, or merchant interested 12 Anne, st. 2. c. 18.

(*x*) 12 Anne, stat. 2. c. 18. sec. 3.

Of Salvage. therein, and the officer of the customs, or his deputy, may nominate *three* of the neighbouring justices of the peace, who shall thereupon adjust the *quantum* of gratuities to be paid to the several persons acting or being employed in the salvage; and such adjustments shall be binding upon all parties, and shall be recoverable in an action at law, to be brought in any court of record by the respective persons, to whom the same shall be allotted. And in case it shall happen that no person shall appear to make his claim to all or any of the goods that shall be saved, then the chief officer of the customs of the nearest port to the place where the ship was in distress, shall apply to *three* of the nearest justices of the peace, who shall put him or some other responsible person in possession of the goods, such justices of the peace taking an account in writing of the goods, to be signed by such officer of the customs: And if the goods shall not be legally claimed within the space of *twelve months* next ensuing, by the rightful owner, then public sale shall be made, (and if perishable goods, they are forthwith to be sold,) and, after all charges deducted, the residue of the monies arising by such sale, with a fair and just account of the whole, shall be transmitted to the Exchequer, there to remain for the benefit of the rightful owner *when appearing;* who, upon affidavit, or other proof, made of his right or property therein, to the satisfaction of one of the Barons of the coif of the Exchequer, shall, upon his order, receive the same out of the Exchequer. (*y*)

12 Anne, st. 2. c. 18.

As this clause omitted to provide for the adjustment of the salvage, in the event of the parties not agreeing in the nomination of justices, the 26th of Geo. II., in supplying this defect, provides, that the justice of the peace, mayor, constable, &c. who shall be nearest to the place, where any ship or goods shall be stranded, shall forthwith give

26 Geo. II. c. 19.

(*y*) 12 Anne, stat. 2. c. 18. sec. 2.

public notice for a meeting to be held as soon as possible, of the sheriff, or his deputy, justices of the peace, chief magistrates of towns corporate, coroners, and commissioners of the land-tax, who, or any five or more of them, are required and empowered to examine persons upon oath, and thereupon adjust the *quantum* of salvage. And if such salvage and expenses be not paid within forty days, the officer of the customs concerned in the salvage may raise the necessary sum by bill of sale upon the ship and cargo, redeemable nevertheless upon payment of the principal borrowed, and interest at four per cent. (z) Of Salvage.

The statute of Anne, as before observed, comprehended the aid given to the ship by the public officers and persons therein-mentioned only. It contained no provision for regulating the salvage to be given to persons *voluntarily* assisting. In order to supply this defect the act of Geo. II. enacts, That in case any person or owners not employed by the master, mariners, or owners, or other persons lawfully authorized, in the salvage of any ship or vessel, or the cargo or provision thereof, shall, in the absence of the persons so employed and authorized, save any such ship, vessel, goods, or effects, and cause the same to be carried for the benefit of the owners or proprietors, into port, or to any near adjoining custom-house, or other place of safe custody, immediately giving notice thereof to some justice of the peace, magistrate, or custom-house or excise officer, or shall discover to such magistrate or officer, where any such goods or effects are wrongfully bought, sold, or concealed, then *such person or persons shall be entitled to a reasonable reward for such services*, to be paid by the masters or owners of such vessels or goods; and to be adjusted, in case of disagreement about the *quantum*, in like manner as the salvage is to be adjusted and paid, by virtue of a statute made in the 12th of Queen Anne. 26 Geo II. c. 19.

(z) 26 Geo. II. c. 19, s. 6 & 7.

Of Salvage. The act also declares, that the commissioners of the land-tax, the deputy-sheriff, the coroner, and the officers of excise in each county, shall be the proper officers for putting these acts in execution, together with those persons respectively named in the act of the 12th of Anne. In the Cinque Ports, however, the execution of these acts is entrusted to the lord warden of the Cinque Ports, the lieutenant of Dover Castle, the deputy warden of the Cinque Ports, the judge official and commissary of the Court of Admiralty of the Cinque Ports, two ancient towns, and the members thereof, and to all and every other person and persons appointed, or to be appointed, by the lord warden of the Cinque Ports.

26 Geo. II. c. 19.

The statute proceeds to enact, that persons convicted of assaulting any magistrate or officer, when in the exercise of his duty respecting the preservation of any ship, vessel, goods, or effects, shall be transported for seven years; and the justices, in the absence of the sheriff, may take a sufficient force with them to repress violence. It directs, in the last place, that the officer of the customs who shall act in preserving any ship or vessel in distress, or the cargo thereof, shall cause all persons belonging to the said ship or vessel, and others who can give any account thereof, or of the cargo thereof, to be examined upon oath before some justice of the peace, as to the name or description of the said ship or vessel, and the names of the master, commander, or chief officer, and owners thereof, and of the owners of the said cargo, and of the ports or places from or to which the said ship or vessel was bound, and the occasion of the said ship's distress; which examination the justices are to take down in writing; and they shall deliver a true copy thereof, together with a copy of the account of the goods, to the officer of the customs, who shall transmit the same to the secretary of the Admiralty for the time being, that he may publish the same, or so much thereof, in the London Gazette, as shall be neces-

26 Geo. II. c. 19.

sary for the information of persons interested therein. This act does not extend to Scotland. Of Salvage.

The two preceding acts had still omitted a description of assistance which the exigency of the case often rendered necessary; namely, persons employed by the authority of the commander, or other superior officer, mariners, or owners, of any ship in distress, without application made to the persons under the statute of Anne. In order to supply this omission, a new act was passed (*a*) in which it was enacted, amongst other provisions, that all the means which subsisted by virtue of that statute, and might by law be applied for the recovering and adjusting the *quantum* of salvage in the cases within it, should be applicable in this case also; and if the commander or other superior officer, mariners, or owners of the ship so saved, or the merchant or other person whose goods shall be saved, or their agents, shall disagree with the salvors as to the *quantum* of the remuneration, the commander of the ship, or the owner of the goods, or the merchant interested therein, or their agents, and the salvors, may nominate three of the neighbouring justices of the peace to adjust it; and if the parties shall disagree in their nomination, any one of the parties may apply to any one such justice, who may himself nominate the two others required by the act. 48 Geo. III. c. 130.

By a fourth statute, passed in the next session of parliament, some provisions were made for the preservation and restoration of cables, packages, and other single articles frequently cast overboard, or otherwise lost or left by ships in distress. By the act for this purpose it is enacted, (*b*) that all persons who shall take up any anchors, 49 Geo. III. c. 122.

(*a*) 48 Geo. III. c. 130. s. 21 & 22.

(*b*) 49 Geo. III. c. 122, s. 1, 2, 3, &c. Both these acts, (the 48 & 49) were enacted at first for only seven years; and would have expired in 1815 and 1816, but were afterwards renewed by the first section in the 53d of the King, and continued till July, 1820, and to the end of the session of Parliament then pending.

Of Salvage. cables, or goods, that may have been left by any vessel within any harbour, river, or bay, or on any of the coasts, whether the same shall have been in any distress or otherwise, shall send a report in writing of the articles found, and the time and place of finding, to the deputy vice-admiral, or his agent, at or near the port to which they shall first bring the articles, within twenty-four hours after their arrival, or before they leave the place, if they leave it within that time, and deliver them at such place as the vice-admiral of each county shall appoint, for safe custody until the articles are claimed by the owner or his agent, and the salvage and charges are paid or secured; and the deputy vice-admiral or his agent is to send the report, or a copy of it, to the secretary of the corporation of the Trinity House of Deptford, who is to place it in some conspicuous situation for public inspection. This report is to be transmitted within two days, if the articles are of the value of 20*l.*; but it need not be done until the articles deposited amount to that value. The deputy vice-admiral, or his agent, may also seize such articles as have not been reported to him, and is required to keep and report them to the Trinity House, in like manner; and if he seize without previous information, he is to have one-third of the value. If he seize in pursuance of information, the third is to be divided between him and the informer. If the articles are not claimed within a year and a day after the report transmitted, they are to be sold, and the money applied as directed by the act of 12 Anne; and, in case they have been seized, the deputy vice-admiral or his agent, and the informer, (if any) are equally entitled to the salvage, which shall be allowed by the Court of Admiralty to the salvors in the case of unclaimed property. And in case of disagreement as to the amount of salvage, or the value of the articles, they are to be adjusted by two justices residing near the place where the articles are deposited; or, in case the justices differ, they may nominate a third person conversant in maritime affairs.

49 Geo. III. c. 122.

48 Geo. III. c. 130. 49 Geo. III. c. 122.

Two justices, or their nominee, are likewise to settle all claims which may be made by pilots, boatmen, and other persons, for services of any description, (except pilotage,) to be rendered by them to any ship or vessel, as well for carrying off from the shore to such ship or vessel any anchors, cables, or other stores from any port or ports of the coast of England and Wales, and Berwick-upon-Tweed, or for the saving and preserving any goods or merchandize, which may have been wrecked, stranded, or cast away from any ship or vessel, or for being instrumental in saving the life or lives of any person or persons on board the said ship or vessel; the master, owner, or owners of such ship or vessel, or his, her, or their agent or agents, being present with such justices; and this whether the vessel shall at the time be in distress, or not. Either party, however, may, within *forty-eight* hours after the award is made, signify his desire of obtaining the judgment of the Court of Admiralty respecting the salvage; and thereupon the person claiming the salvage must proceed within *thirty* days from the date of the award by taking out a monition; but the justices are in such cases to deliver the goods to the proprietors, or their agent, upon their giving good security in double the amount of the value, to be taken in the manner prescribed by the act.

Of Salvage.

48 Geo. III. c. 130. 49 Geo. III. c. 122.

If the master, mate, or crew of any vessel bound to parts beyond the seas, shall find, and take on board the vessel, any anchor, cable, goods, or merchandize, or receive and take them on board from any other person, knowing the same to have been so found, the commander of the vessel must make an entry of the articles, and the time and place of finding, in his log-book; and at the first possible opportunity transmit a copy of the entry to the Trinity House; and on the return of the vessel to any port in England or Wales, or the town of Berwick-upon-Tweed, he must deliver the articles to the deputy vice-admiral, or his agent, who is to transmit a similar report, as before mentioned to the Trinity House, for public

Of Salvage. inspection; and if there be no claim within a year and a day after such report transmitted, the articles are to be sold and disposed of according to the law with regard to unclaimed property.

48 Geo. III. c. 130, & 49 Geo. III. c. 122. The above two acts, (the 48th and 49th) were originally passed only for seven years; but were enlarged and continued for seven years longer by the 53 Geo. III. c. 87, which was chiefly passed by the legislature in order to supply a defect in the two former acts as to the sale of perishable goods by the salvors, and to prevent certain abuses by lords of manors upon occasion of wrecks.

53 Geo. III. c. 87. With this purpose it is enacted by this statute, that no lord of any manor, or other person, who may be entitled to, or claim to be entitled to, wreck of the sea, or to any goods found jetsam, flotsam, or lagan, shall be authorised to appropriate such wreck or goods to his, her, or their own use, or otherwise to dispose thereof, until he, she, or they, shall have caused a report thereof in writing to be given to the deputy vice-admiral of that part of the coast where the same shall have been stranded, wrecked, or found, or to his agent; or if there shall be no such deputy vice-admiral, or agent residing within the distance of fifty miles, then to the Corporation of the Trinity House of Deptford; which report shall contain an accurate and particular description of the wreck, or goods found, and of the place or places, and time or times where and when the same may have been found, aud of any marks that may be thereon, and of such other particulars as may the better enable the owner or owners thereof to recover the same; and also of the place or places where the same are deposited, and may be found and examined by any persons claiming any right to such wreck, or goods, nor until the full expiration of one whole year and a day after the delivery of such notice, any thing in any law to the contrary notwithstanding; and the deputy vice-admiral, or agent aforesaid, shall, within *forty-*

eight hours after receiving such report as aforesaid, transmit a copy thereof to the secretary of the Corporation of the Trinity House of Deptford, upon pain of forfeiting, for any neglect to transmit such account as aforesaid, the sum of fifty pounds, to any person who will sue for the same; and the said secretary shall cause such account to be placed in some conspicuous situation for the inspection of all persons claiming to inspect and examine the same; provided always, that nothing herein contained shall extend or be construed to extend to repeal, or in any manner to affect, any of the provisions of an act passed in the last session of parliament, entitled, "an act for charging foreign liquors and tobacco, derelict, jetsam, flotsam, lagan, or wreck, brought or coming into Great Britain, with the duties payable on importation of such liquors and tobacco."

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53 Geo. III. c. 87.

When any goods which shall be found or taken possession of by any lord of any manor, or person entitled, or claiming to be entitled to, wreck of the sea, or to goods found flotsam, jetsam, or lagan, or his, or her agent, or servant, or by any vice-admiral, or his deputy, or agent, or by any officer or other person whatsoever, acting by or under the authority of the said recited acts, or of either of them, shall be of so perishable a nature, or so much injured or damaged that the same cannot be kept, then such goods shall and may, at the request of any of the persons interested or concerned therein, or in the saving and preserving thereof, by and with the consent and approbation of some justice of the peace not interested or concerned in the same, or in the saving or preserving thereof, and in the presence of such justice, or of some person for that purpose specially appointed by such justice, be sold by public auction, or private contract, as such justice may direct by some writing under his hand, which writing shall contain an accurate and particular account of the goods, and of any marks that may be thereon, or other particulars belonging thereto, and of the times and places of the finding and intended sale thereof; and the money raised

53 Geo. III. c. 87.

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53 Geo. III. c. 87.

by such sale, after defraying the reasonable expenses of the sale, to be settled and allowed by such justice, shall be deposited and remain in the hands of the lord of the manor, or other person, or deputy vice-admiral, who would have received the custody of the goods so sold, to abide and be subject and liable to the claims of all persons in like manner as the goods themselves would be subject and liable to if remaining unsold; provided always, that all persons required to transmit reports to the deputy vice-admiral, of the finding of any goods shall, in case of any such sale at last aforesaid, likewise transmit to such deputy vice-admiral an account of such sale and of the proceeds thereof; and the said deputy vice-admiral shall forward such reports to the Secretary of the Trinity House of Deptford, within the like periods, and under and subject to the like penalties and forfeitures for any neglect therein, as in cases of any goods found and required to be reported under the provisions of the said recited act, and this act.

53 Geo. III. c. 87.

It shall be lawful for the deputy vice-admiral of the part of the coast where any ship or vessel shall be stranded or wrecked, or where any wreck of the sea or goods shall be cast on shore, and for his agent, and also for the owner or master of any such ship or vessel, and for the owners of any such goods, or of any part thereof, and for any officer of the customs or excise, and other officer, and for all persons whatsoever, employed in acting in aid of such deputy vice-admiral, officer, master, or owner, as aforesaid, in the saving or recovering any such ship or vessel, or the cargo, stores, tackle, or other articles belonging to the same, or the preserving the lives of the crew or persons belonging thereto, or of any wreck as aforesaid, to pass and re-pass with their horses, carts, carriages, or servants, over any lands near to the part of the sea-coast where such vessel shall be so wrecked or stranded, or on which such wreck shall be cast, without interruption or obstruction by the owner or occupier thereof, for the purpose of rendering assistance in saving, recovering,

and preserving any such ship, or vessel, or goods, or stores, or any cables, anchors, spars, masts, cordage, or other tackle, or articles belonging to any ship or vessel, or for saving, or otherwise assisting in preserving, the lives of the crew, or of any persons on board of any such ship or vessel, or for the taking possession of, and securing for the benefit of the owners thereof, of any wreck c" goods, or other things cast on shore, or found on shore or found near thereto, provided there shall be no road by which the parties may pass and repass with as much convenience and expedition as over such lands; and also to place any planks, timber, or any part of the wreck, or any goods or stores removed or saved from any such ship or vessel, or any other wreck or goods aforesaid, upon any such land for a reasonable time, until they can be removed to some warehouse or safe place of deposit, making compensation to the occupier of such lands for any damage done by the means aforesaid, which compensation shall be a charge upon the wreck or goods in respect whereof the damage may be done, in like manner as salvage; and in case the parties cannot agree as to the amount thereof, then the same shall be ascertained and settled by two justices of the peace, or of a third person to be named by them, in such manner and within such times as the amount of salvage is directed to be ascertained and settled by the said recited act in the 49th year of his said Majesty's reign.

Of Salvage.

53 Geo. III. c. 87.

It has been before observed, that the operation of the above acts is especially restrained from affecting the privileges of the Cinque Ports, which are therefore governed by regulations enacted for them in other statutes. The principal of these rules, as respects salvage, are: By an act of Geo. I. (*b*) the lord warden is authorised to appoint commissioners, of whom any one may adjust the salvage

Regulations of the Cinque Ports.

(*b*) Continued by 3 Geo. I. c. 13. s. 5. The Cinque Ports are Dover, Sandwich, Romney, Hastings, and Hythe, and the two ancient towns of Winchelsea and Rye. The limits are defined in 48 Geo. III. c. 130, s. 20.

Of Salvage.

for cables and anchors. By the statute of Geo. II. (*c*) the Lord Warden of the Cinque Ports, and the Lieutenant of Dover Castle, the deputy warden of the Cinque Ports, the judge official and commissary of the Court of Admiralty of the Cinque Ports, two ancient towns, and the members thereof, and all and every of them, and all and every person appointed by the lord warden pursuant to the before-mentioned statute of Geo. I. are to be the persons appointed to put in execution the several statutes within the jurisdiction of the Cinque Ports, two ancient towns, and members thereof, in the same manner as any justice of peace, or other persons, are authorized to do in other places.

Of the Cinque Ports.

And by an act passed in the 48th year of his present Majesty's reign, (*d*) in which the act of Geo. I. before alluded to is recited; and in which it is also recited, "that it is found expedient that the commissioners of salvage appointed by the lord warden should have further powers granted them for the purpose of deciding in all other cases of services rendered to shipping not provided for by the said former acts; it is enacted, that it shall and may be lawful for the lord warden of the Cinque Ports for the time being to nominate and appoint, by any instrument or instruments under his hand and seal, three or more substantial persons in each of the Cinque Ports, two ancient towns, and their members, to adjust and determine any difference relative to salvage, which may arise between the master of any vessel and the person or persons bringing such cables and anchors ashore; and in case any ship or vessel shall be either forced or cut from her cables and anchors by extremity of weather, or by any other accident whatever, and leave the same in any roadstead, or place within the jurisdiction of the Cinque Ports, two ancient towns, and their members, and the salvage cannot be adjusted between the persons concerned; then the same

48 Geo. III. c. 130.

(*c*) 26 Geo. II. c. 19. s. 10. (*d*) 48 Geo. III. c. 130.

shall be determined by any *three* or more of the said persons so to be appointed as aforesaid, within the space of twenty-four hours after such difference shall be referred to them for their determination thereof; any usage or custom to the contrary in any wise notwithstanding." Of Salvage.

By this new act, also, the commissioners are authorised to decide on all claims made by any person whatsoever, for services of any sort or description rendered to any vessel, as well for carrying out anchors, cables, or stores, from any place within the jurisdiction, as for conducting vessels from the Downs, and other bays and roadsteads on the coast of Kent, Sussex, and Essex, and from the island of Thanet, or from the sea, or any place, to Ramsgate, Dover, or any other place within the jurisdiction, or for the saving or preserving within the jurisdiction any goods or merchandises, wrecked, stranded, or cast away from any vessel, the master or owners thereof, or their agent, being present at the place where the commissioners are sitting; and this, whether the ship shall have been in distress or not. But no commissioner can act for any other port or place than that in which he is resident; and either party may, within twenty-four hours after the award, declare his desire of obtaining the judgment of some competent Court of Admiralty, with respect to the salvage or compensation; in which case the salvors must forthwith declare whether they will proceed in the admiralty of England, or in the admiralty of the Cinque Ports, and must proceed by monition within twenty days from the date of the award; and the commissioners are to permit the ship and cargo to depart on their voyage, or deliver the goods to the owners, taking bail in double the amount of the sum awarded. All anchors, cables, merchandise, and marine stores, found by boatmen and others, are to be delivered at Ramsgate, Deal, or Dover, or such other place of public deposit as shall be declared by the Lord Warden; and the officers of the Lord Warden may seize such articles either at sea or on shore. The statutes then reserve the jurisdiction

Of the Cinque Ports.

48 Geo. III.

Of Salvage.

of the Courts of Admiralty: that of the Courts of common law is holden to remain in all cases, except where expressly excluded by a provision in the statute. (*e*)

Secondly, As to salvage in the case of capture and re-capture.

In the case of capture and re-capture.

By the ancient marine law of England, and before any act of parliament upon the subject, it was holden, that property in ships and cargoes was not so changed by capture as to bar the owner in favour of a vendee, or re-captor, till there had been a sentence of condemnation by a competent court. Upon this principle, judgment was given in the Admiralty Court in a very early case, decreeing restitution of a ship re-taken by a privateer, though she had been fourteen weeks in the enemy's possession. Another case was decided upon the same principle, though the vendee had possessed the property for a long time, and after two preceding sales and many voyages. (*f*) According to this law, therefore, the *jus postliminii* of the owners continued till the actual condemnation of the ship, which subsequent acts of parliament, now about to be quoted, have extended; so that this right of the owner now continues for ever. By the effect of these statutes, the owner is now entitled to have his ship and goods restored to him, however distant the time of re-capture may be from that of the original taking, and whether they were retaken after condemnation or before.

The two first of these statutes are of the reign of George II. (*g*) By these acts, taken together, all ships and vessels of His Majesty's subjects, which had been captured by the enemy, and were retaken, either by men of war, or by privateers, were decreed to be restored to the

(*e*) 48 Geo. III. c. 130. sec. 1 to 9, inclusive.

(*f*) 2 Burr. 694.

(*g*) 13 Geo. II. c. 4. and 29 Geo. II. c. 34.

original owners, upon paying for salvage the sums mentioned in the statutes; and the quantum of salvage to be paid to privateers was made to depend upon the length of time which the re-captured vessel had been in the enemy's hands; such salvage, however, never to exceed a moiety of the value.

Of Salvage.

In the case of capture and re-capture.

The distinction has been abolished by the later prize acts; (*h*) and the rate of salvage payable in all cases is fixed to one-eighth in value, if the re-capture be made by any of His Majesty's ships; and to one-sixth, if by a privateer or other ship. It is enacted by these acts, that if any ship or vessel, or boat taken as prize, or any goods therein, shall appear and be proved in any Court of Admiralty having a right to take cognizance thereof, to have belonged to any of His Majesty's subjects of Great Britain or Ireland, or any of the dominions and territories remaining and continuing under His Majesty's protection and obedience, which were before taken or surprised by any of His Majesty's enemies, and at any time afterwards again surprised and retaken by any of His Majesty's ships of war, or any privateer, or other ship, vessel, or boat, under His Majesty's protection and obedience; that then such ships, vessels, boats, and goods, and every such part and parts thereof as aforesaid, formerly belonging to such His Majesty's subjects, shall, in all cases (save in such as are hereafter excepted,) be adjudged to be restored; and shall be, by decree of the said Court of Admiralty, accordingly restored to such former owner or owners, or proprietors, he or they paying for and in lieu of salvage, (if retaken by any of His Majesty's ships,) one-eighth part of the true value of the ships, vessels, boats, and goods respectively, so to be restored, which said salvage of one-eighth shall be awarded and paid to the flag-officers, captains, officers, seamen, marines, and soldiers, in His Majesty's said ship or ships

(*h*) 33 Geo. III. c. 66. s. 42. and 43 Geo. III. c. 160. s. 39. and 45 Geo. III. c. 72. s. 7. 48 Geo. III. c. 132.

Of Salvage.

In the case of capture and re-capture.

of war, to be divided in such manner as before in this act is directed touching the share of prizes belonging to the flag-officers, captains, officers, seamen, mariners, and soldiers, where prizes are taken by any of His Majesty's ships of war; and, if re-taken by any privateer or other ship, vessel, or boat, one-sixth part of the true value of the said ships, vessels, boats, and goods; all which payments to be made to the owner or owners, officers, and seamen, of such privateer, or other ship, vessel, or boat, shall be without any deductions, and shall be divided in such manner and proportions as shall have been agreed on by them as aforesaid; and in case such ship, vessel, or goods, shall have been retaken by the joint operation or means of one or more of His Majesty's ships, and one or more private ship or ships, then the judge of the High Court of Admiralty, or other Court having cognizance thereof, shall order and adjudge such salvage to be paid to the recaptors, by the owner or owners of such re-taken ship, vessel, or goods, as he shall, under the circumstances of the case, deem fit and reasonable; which salvage so to be adjudged shall be accordingly paid by the owners of such re-taken ship, vessel, or goods, to the agents of the recaptors, in such proportions as the Court shall adjudge; but if such ship or vessel, so re-taken, shall appear to have been, after the taking by His Majesty's enemies, by them set forth as a ship or vessel of war, the said ship or vessel shall not be restored to the former owners or proprietors, but shall in all cases, whether re-taken by any of His Majesty's ships, or by any privateer, be adjudged lawful prize for the benefit of the captors.

The above, therefore, is the law of salvage, with respect to capture and recapture, in a period of hostilities. We shall proceed to illustrate its application in the principal caes which have arisen under this head in the Courts of Law and Admiralty. In the courts of law, these cases are very rare, the proceedings being less convenient, and attended with more expence, than the process of the Ad-

miralty; which is, moreover, the peculiar jurisdiction for cases of this kind.

Of Salvage.

It is a first principle that in the case of one vessel saved by another, the master and crew are strictly the only salvors. The owners claim only under the equitable consideration of the Court, for the risk of their vessel, &c. the Court being not disposed to allow their claim to any great amount. (*i*)

Of Salvage in cases of capture and recapture.

A convoying ship may be entitled to salvage for the recapture of a vessel which was first taken under its protection, provided the vessel were effectually carried off, and possessed by the enemy. (*k*) A ship once sent forth and employed as a privateer, or vessel of war, falls within the exception, and is not to be restored upon recapture, although at the time of the recapture it may be employed purely as a merchant ship, carrying a cargo, without any commission of war or any arms, except a few muskets for self-defence. (*l*) But the mere act of putting men on board a captured ship, which was armed at the time, and employing her as a cruizer, without a commission of war, does not bring the ship within the exception, nor defeat the right of the original owner. (*m*)

If a ship captured by the enemy be voluntarily abandoned by him at sea, after taking out the crew, either because he may be unable, or may not think it worth while, to carry her into port, and she be found and taken possession of by a British ship of war; this is not a recapture within the Act of Parliament; and the Court of Admiralty is not restricted as to the rate of salvage, but may apportion it to the nature and merits of the case. (*n*)

(*i*) San Bernardo, Laretta, 1 Rob. 177.

(*k*) The Wight, Ford, 5 Rob. A. R. 215.

(*l*) L'Actif, Lorrial, 1 Edw. 185.

(*m*) The Horatio Nelson, 6 Rob. 320.

(*n*) The Gage, Mitchell, 6 Rob. 273. The Lambton, *Id.* 275, note; and the Lord Nelson, 1 Edw. 79.

Of Salvage.

In the case of capture and re-capture.

The regulations in the acts apply to the cases of ships cut out from under a fort, as well as to recaptures in the open seas. But these acts allow no distinction or extra reward in remuneration of the greater personal gallantry of the recaptors; but where the case does not come within the rules prescribed by the statutes, the Court of Admiralty will exercise a liberal discretion. (*o*) The Court of Admiralty will likewise exercise great liberality towards non-commissioned captors. In one case, the Court gave the whole proceeds (after condemnation) as a droit of Admiralty; one-third to the owners, and two-thirds to the crew; to be divided according to the usual proportion in sloops of war. (*p*) In another case, during the late war, where non-commisioned persons recaptured an English ship with a French cargo on board, the Court gave the salvors one-sixth for the ship, and the whole of the cargo; the latter being of small amount. (*q*) According to the general rule, salvage is not due for neutral ships retaken from the enemy; the presumption being, that such capture has arisen from mistake, and that justice would have been done, if the vessel had been carried into the port of the enemy. But the conduct of France during the last war induced the Courts of this country to depart from this general rule, and to allow salvage on the recapture of neutral property from the French. (*r*) Upon this principle salvage was given on recapture of neutral property out of the hands of Spanish cruizers; such property having been taken under the Berlin decree, the English Court of Admiralty presuming that it would have been infallibly condemned if carried into a French or Spanish port. (*s*) And, upon a similar principle, salvage was given for bringing off a Portuguese vessel and cargo belonging to British and Portuguese subjects, which had put into the port of Muros, in Spain, a port within the power of the French,

(*o*) Apollo, Veal, 3 Rob. 308.

(*p*) Haase, 1 Rob. 286.

(*q*) Fortuna, Gerrits, 4 Rob. 78.

(*r*) Huntress, Stinson, 6 Rob. 108. Carlotta, Pasqual, 5 Rob. 54.

(*s*) Sansom, Stevens, 6 Rob. 410.

though not within their actual occupation. (*t*) Upon the same general reason, where a neutral merchant shipped goods on board a British armed ship, and was captured by the enemy, but afterwards re-captured; the Court of Admiralty held, that inasmuch as there was every ground for her condemnation, though a neutral, had she been carried into the enemy's port, salvage was due to the re-captors. (*u*)

Of Salvage in the case of capture and re-capture.

Salvage on re-capture, under the general maritime law, is taken out of the act of parliament by the circumstance that the re-captured vessel never came into the possession of the re-captor. (*x*) This was a case of salvage on re-capture of a British merchantman, which had separated from her convoy during a storm, and had been brought to by a French lugger, which came up, and directed the master to stay by her till the storm moderated, when they would send a boat on board. The lugger continued alongside, sometimes a-head and sometimes a-stern, and sometimes to windward, for three or four hours. A British frigate coming in sight, chased the lugger, and captured her; during which time the merchantman made her escape, rejoined the convoy, and came into Pool. Sir William Scott, in giving judgment said, that the only question was, whether it was a case of salvage under the Act of Parliament, the vessel never having come into the actual possession of the re-captor. "I rather incline (he says) to think it is not. The terms of the Act of Parliament, *if at any time afterwards surprised and retaken by any of his Majesty's ships of war, &c.*, seem to point to a case attended with the circumstance of an actual possession taken. But if it be not a case of re-capture under the act, it is, however, still a case of salvage under the general maritime law;

(*t*) Pensamento, Felix, Macalhaens, Edw. 115.

(*u*) Fanny, Lawton, Dod. 448.

(*x*) The Edward and Mary, 3 Rob. 305.

Of Salvage in the case of capture and re-capture.

and shall give the same reward as if it had been under the Act of Parliament." (*y*)

Where salvage is settled by the commissioners of the Cinque Ports by the statutes of 12 Anne and 26 Geo. II., their award may be pleaded to proceedings in the Admiralty Court; and such award is not required in writing. (*z*)

During the late war, some cases of military salvage arose in the Admiralty Courts; and the rule with respect to this species of salvage seems to be, that it will not be given except in cases where the property rescued was either in the possession of the enemy, or so nearly, as to be certainly and inevitably within his grasp. But, in cases where this claim of salvage cannot be supported, the Court nevertheless will not overlook actual service in preserving the ship and cargo from distress. (*a*)

The Courts of Admiralty, proceeding upon equitable principles, will not extend the claim of salvage by an application of rigid rules, in cases where the property which had been restored, in bail, to the proprietor, to answer salvage, has been destroyed by an accident carrying with it neither censure nor penalty to the parties concerned. Therefore, in a case of demand for salvage on re-captured property, consumed by fire before the execution of the commission of the appraisement; the Court held that, under the valuation, the intervening accident must be considered at the risk of the joint property remaining within the custody of the Court for the purposes of justice; and that the loss must fall upon both parties, in the proportion of their several interests. The claim, therefore, for salvage on the original full value was

(*y*) 3 Rob. 308, one-eighth salvage given.

(*z*) The American Hero, 3 Rob. 323.

(*a*) The Franklin, 4 Rob. 147.

overruled. (*b*) In a case of joint service, where men of war and transports were associated in a common expedition, the Court refused salvage to a King's ship for rescuing from the hands of the enemy a hired transport, upon the principle that the officers of the ship had only done their duty, and what they were bound to do, for a companion in a common danger. (*c*) Salvage will not be given for the rescue of a ship, not actually taken from the possession of the enemy, but which had been previously released on bail; (*d*) and the right of the re-captors to salvage is extinguished by a regular sentence of condemnation carried into execution, and divesting the owners of their property. But where the property is restored by application to the royal authority, and the master is again put into possession, the Court of Admiralty will look to the equity and substance of the proceeding, and will not consider the right of the salvors to be affected by the legal fiction of conversion. (*e*) In no instance has more than one half been decreed by way of salvage, except when the crown alone has been concerned, and no claim made for a private owner. (*f*)

Of Salvage in the case of capture and re-capture.

Many complicate cases have arisen in questions of salvage where the re-capture has been joint. There is an obvious distinction in the Admiralty Courts, as to associated ships employed on a specific service, and a fleet not so associated; and this equally holds as to single ships. A privateer actually in chase, and coming up first, has been allowed to share with a king's ship in salvage on re-capture; and the apportionment of the reward was according to their respective forces. (*g*) And in a case where a privateer was the actual re-captor, and a king's ship in sight, the Court decreed one-sixth salvage to be paid by the owners of the re-captured vessel, and only allowed the

Of salvage, in cases where the re-capture is joint.

(*b*) Three Friends, 4 Rob. 268.
(*c*) The Belle, Edw. 66.
(*d*) Robert Hale, Edw. 265.
(*e*) Charlotte Caroline, Dod. 192.
(*f*) L'Esperance, Dod. 46.
(*g*) Wanstead, Edw. 268.

Of Salvage in cases of joint re-capture.

king's ship to share against the privateer as upon an eighth. (*g*)

It does not fall within our purpose to examine the numerous cases in which a share in prizes is claimed upon the ground of joint capture; but as many of these cases involve the question of salvage as upon a re-capture, it may be necessary to refer to some of the leading decisions.

It is not essential that two ships should have pursued the enemy in precisely the same or a parallel direction; even a sailing in opposite directions, with the intention of capturing, will not defeat the unity of purpose or operation. But an *animus persequendi*, coupled with an erroneous course, is not sufficient; nor will a mere going in search establish a joint pursuit. And when a ship or fleet, by accident or design, diverts the course of an enemy's ship, and thereby occasions capture by a totally distinct force, it cannot be considered a joint capture. (*h*) It is not the disposition of the Court to extend the interests of joint captors beyond the present limits; no service, therefore, antecedent or subsequent, unless the ship be employed in the identical service of the expedition, will impart a prize interest. (*i*) Constructive assistance by boats cannot entitle the ships to which they belong to share, though actual capture by the boats would be sufficient for that purpose, for they are a part of the force of the ship. (*j*) The admission of a constructive captor to share with the actual captor cannot be so far extended as to let in another ship, which had been a joint chaser, previously with such constructive captor, where there was no contribution of assistance, either virtual or actual, but only a picking up of the boats of the ship, which became afterwards the constructive captor; (*k*) and the *onus probandi*

(*g*) The Providence, Edw. 270.

(*h*) Le Niemen, Dod. 9.

(*i*) Buenos Ayres, Dod. 33.

(*j*) La Belle Coquette, Dod. 20.

(*k*) Financier, Dod. 66.

lies upon the joint captor to make out his case. (*l*) Darkness intervening and preventing sight will not universally exclude from a right to share; nor can the opposite rule be universally laid down: but if the asserted joint captor continued steering the same course with the prize, and but for darkness must have been in sight, the Court will sustain the claim. (*m*) The circumstance alone of being in sight entitles a ship to share in the prize, unless the case fall within the exceptions. (*n*) But a revenue cutter is not entitled to share with the actual captors, merely on the ground of being in sight. (*o*) It is a clear rule of law, that when ships are engaged in a joint enterprise, and are acting under the orders of the same superior officer, they are entitled to share in each other's prizes. (*p*)

...re-capture.

We have cited the above cases in order to shew the principle upon which the Court of Admiralty proceeds in determining questions of capture, whether they are joint or several. It is unnecessary to observe that cases of capture frequently resolve themselves into mere cases of re-capture, upon which the question of salvage arises. In all cases where the re-capture is joint, the Court governs itself by the same equitable principles which it applies to the cases of simple re-capture, and apportions the salvage accordingly.

Of salvage on rescue.

No rule is prescribed by the law of England in the case of foreign property rescued. In cases of rescue by British subjects, the Court usually adopts the proportion of re-capture; but it is not bound so to do, neither is the reward limited. In respect to foreigners the only guide is, that of *quantum meruit*. And every person assisting in a rescue acquires a lien *in rem*. And the Court of Admiralty will exercise jurisdiction over a foreign ship rescued

(*l*) Union, Dod. 349., and John *Ib*. 363.
(*m*) Union, Dod. 349.
(*n*) Sparkler, Dod. 360.
(*o*) Bellona, Edw. 63.
(*p*) Empress, Dod. 372.

Of Salvage on rescue.

from the enemy, where there is any British subject concerned in the rescue who prays to be rewarded; and therefore, in a case of salvage on re-capture of an American ship by the crew, part of whom were British seamen, and claimed to be rewarded, the Court overruled the protest against their jurisdiction. It should seem, moreover, that foreign seamen, rescuing a foreign ship and cargo, and bringing them to this country, might entertain an action *in rem* in the British Admiralty Courts. (*q*) In a case of rescue from the enemy on the part of a British master and boy, one-sixth was given as salvage, the Court holding it to be a case of great merit. (*r*)

It is the peculiar law of England to restore to the former owner British property captured and re-taken from the enemy; the *jus postliminii* still remaining so long as the property is in the hands of the enemy. But the prize act (*s*) does not give restitution where vessels so taken have been sent forth after capture by the enemy for the purposes of war. (*t*)

Of salvage on re-capture by a military force.

In the case of the ships re-captured from the French at Oporto, by the allied British and Portugese army, the Court refused salvage on Portuguese property, but gave it on British without distinction, including the cargoes which had been relanded and warehoused by the enemy, and estimated the value at the port of restitution. (*u*) And in the Admiralty Court the army is alone considered as re-captors, and entitled to sustain a claim of salvage, for service done without the co-operation of the naval force. (*x*) But the liberation of the property by the army must be the immediate and direct consequence of military operations, either in the vicinity of the place besieged, or so as

(*q*) Two Friends, 1 Rob. 279.
(*r*) Beaver, 3 Rob. 292.
(*s*) 45 Geo. III. c. 72.
(*t*) L'Actife, Edw. 185. and see *ante*.
(*u*) Progress, Edw. 210.
(*x*) *Ib.*

to have an immediate influence on its surrender. (*y*) And possession of the port of the enemy, in which the vessels were contained, was deemed a sufficient capture to entitle the re-captors to salvage, without having actual possession of each individual ship. And it is not necessary that it should be the primary intention of the captors to recover the property; but it will be sufficient if the service be performed, and the recovery of the property be the immediate and necessary result. (*z*) So persons not in a military capacity, but merely acting as private individuals, if they happen by any successful effort to rescue property from the enemy, will be entitled to salvage. (*a*) And re-capture by the conjunct operations of the army and navy is within the provisions of the prize act, which was drawn only with the intention of expressing the meaning of the law of nations as it at present exists. (*b*)

Of Salvage on military re-capture.

In the re-capture, of which we have been speaking, the Court gave salvage on the freight of those vessels which were chartered for one entire voyage out and home; considering them in the course of earning their freight whilst in the harbour of Oporto. But salvage was not given upon the freight of vessels taken up at Oporto, whose voyage had not commenced. (*c*)

In the case of the Actæon (*d*) salvage was decreed on neutral vessels re-captured from the French, not having certificates of origin on board. The Court in this case repeated the well-known principle, that no salvage was due where a service was not actually performed, or where a loss was not highly probable: but added, that where there was ground to apprehend that the prize court of the belligerent would have considered the capture legal, the re-captors should be entitled to salvage. (*e*)

(*y*) Progress Edw. 215.
(*z*) *Ib.* 211.
(*a*) Ceylon, Dod. 117.
(*b*) *Ib.* 214.
(*c*) *Ib.* 223.
(*d*) Edw. 254.
(*e*) *Ib.* 260.

APPENDIX

TO THE

LAW OF SHIPPING AND NAVIGATION.

12 CAR. II. c. 18.

An Act for the Encouraging and Increasing of Shipping and Navigation.

FOR the increase of Shipping and encouragement of the Navigation of this nation, wherein, under the good Providence and protection of God, the wealth, safety, and strength of this kingdom is so much concerned; Be it enacted, by the king's most excellent Majesty, and by the Lords and Commons in this present parliament assembled, and by the authority thereof, that from and after the 1st day of December, 1660, and from thenceforward, no goods or commodities whatsoever shall be imported into, or exported out of any lands, islands, plantations, or territories to His Majesty belonging, or in his possession, or which may hereafter belong unto, or be in the possession of His Majesty, his heirs and successors, in Asia, Africa, or America, in any other ship or ships, vessel or vessels whatsoever, but in such ships or vessels as do truly, and without fraud, belong only to the people of England or Ireland, dominion of Wales, or town of Berwick-upon-Tweed, or are of the built of and belonging to any of the said lands, islands, plantations, or territories, as the proprietors and right owners thereof, and whereof the master and three-fourths of the mariners at least are English; under the penalty of the forfeiture and loss of all the goods and commodities which shall be imported into or exported out of any the aforesaid places, in any other ship or vessel, as also of the ship or vessel, with all its guns, furniture, tackle, ammunition, and apparel; one-third part thereof to His Majesty, his heirs and successors; one-third part to the governor of such land, plantation, island or territory where such default shall be committed, in case the said ship or goods be there seized, or otherwise that third part also to His Majesty, his heirs and successors; and the other third part to him or them who shall seize, inform or sue for the same, in any court of record, by bill, information, plaint, or other

No goods shall be imported from the plantations, but in English-built ships.

Master and three-fourths mariners English.

Penalty.

action, wherein no essoin, protection or wager of law shall be allowed; and all admirals and other commanders at sea, of any the ships of war or other ship having commission from His Majesty, or from his heirs or successors, are hereby authorized and strictly required to seize and bring in as prize, all such ships or vessels as shall have offended contrary hereunto, and deliver them to the Court of Admiralty, there to be proceeded against; and, in case of condemnation, one moiety of such forfeitures shall be to the use of such admirals or commanders, and their companies, to be divided and proportioned amongst them, according to the rules and orders of the sea, in case of ships taken prize; and the other moiety to the use of His Majesty, his heirs and successors.

Aliens shall not exercise the occupation of merchants or factors in the plantations.

II. And be it enacted, That no alien or person not born within the allegiance of our Sovereign Lord the King, his heirs and successors, or naturalized, or made a free denizen, shall from and after the 1st day of February, which shall be in the year of our Lord 1661, exercise the trade or occupation of a merchant or factor in any of the said places; upon pain of the forfeiture and loss of all his goods and chattels, or which are in his possession; one-third to His Majesty, his heirs and successors; one-third to the governor of the plantation, where such person shall so offend; and the other third to him or them that shall inform or sue for the same in any of His Majesty's Courts in the plantation where such offence shall be committed; and all governors of the said lands, islands, plantations or territories, and every of them, are hereby strictly required and commanded, and all who hereafter shall be made governors of any such islands, plantations or territories, by His Majesty, his heirs or successors, shall before their entrance into their government take a solemn oath, to do their utmost, that every the aforementioned clauses, and all the matters and things therein contained, shall be punctually and *bonâ fide* observed according to the true intent and meaning thereof; and upon complaint and proof made before His Majesty, his heirs or successors, or such as shall be by him or them thereunto authorized and appointed, that any the said governors have been willingly and wittingly negligent in doing their duty accordingly, that the said governor so offending shall be removed from his government.

Governors, &c. of plantations to take an oath for the observation of the aforementioned clauses.

Goods of Asia, Africa, and America.

III. And it is further enacted by the authority aforesaid, that no goods or commodities whatsoever, of the growth, production or manufacture of Africa, Asia, or America, or of any part thereof, or which are described or laid down in the usual maps or cards of those places, be imported into England, Ireland or Wales, islands of Guernsey and Jersey, or town of Berwick-upon-Tweed, in any other ship or ships, vessel or vessels, whatsoever, but in such as do truly and without fraud belong only to the people of England or Ireland, dominion of Wales, or town of Berwick-upon-Tweed, or of the lands, islands, plantations or territories in Asia, Africa, or America, to His Majesty belonging, as the proprietors and right owners thereof, and whereof the master and three-fourths at least of the mariners are English; under the penalty of the forfeiture of all such goods and commodities, and of the ship or vessel in which they were imported, with all her guns, tackle, furniture, ammunition, and apparel; one moiety to His Majesty, his heirs and suc-

cessors; and the other moiety to him or them who shall seize, inform or sue for the same in any Court of Record, by bill, information, plaint, or other action, wherein no essoin, protection or wager of law shall be allowed.

No goods of foreign growth or manufactures shall be brought into England, &c. in English ships, but only from the places of their said growth.

IV. And it is further enacted by the authority aforesaid, that no goods or commodities that are of foreign growth, production or manufacture, and which are to be brought into England, Ireland, Wales, the islands of Guernsey and Jersey, or town of Berwick-upon-Tweed, in English-built shipping, or other shipping belonging to some of the aforesaid places, and navigated by English mariners, as aforesaid, shall be shipped or brought from any other place or places, country or countries, but only from those of the said growth, production, or manufacture, or from those ports where the said goods and commodities can only be, or are, or usually have been, first shipped for transportation, and from none other places or countries; under the penalty of the forfeiture of all such of the aforesaid goods as shall be imported from any other place or country contrary to the true intent and meaning hereof, as also of the ship in which they were imported, with all her guns, furniture, ammunition, tackle, and apparel; one moiety to His Majesty, his heirs and successors, and the other moiety to him or them that shall seize, inform or sue for the same in any Court of Record, to be recovered as is before expressed.

In what case ling, stock-fish, &c. oil, &c. whale fins, &c. imported, shall pay double alien's custom.

V. And it is further enacted by the authority aforesaid, that any sort of ling, stock fish, pilchard, or any other kind of dried or salted fish, usually fished for and caught by the people of England, Ireland, Wales, or town of Berwick-upon-Tweed, or any sort of cod-fish or herring, or any oil or blubber made, or that shall be made of any kind of fish whatsoever, or any whale-fins or whale-bones, which shall be imported into England, Ireland, Wales, or town of Berwick-upon-Tweed, not having been caught in vessels truly and properly belonging thereunto, as proprietors, and right owners thereof, and the said fish cured, saved and dried, and the oil and blubber aforesaid, (which shall be accounted and pay as oil,) not made by the people thereof, and shall be imported into England, Ireland, or Wales, or town of Berwick-upon-Tweed, shall pay double alien's customs.

No goods to be laded or carried from one part of England to another in the vessel of any alien not denizened, &c.

VI. And be it further enacted by the authority aforesaid, that from henceforth it shall not be lawful to any person or persons whatsoever, to load or cause to be loaden and carried in any bottom or bottoms, ship or ships, vessel or vessels whatsoever, whereof any stranger or strangers born, (unless such as shall be denizens or naturalized,) be owners, part owners, or master, and whereof three-fourths of the mariners at least shall not be English, any fish, victual, wares, goods, commodities, or things, of what kind or nature soever the same shall be, from one port or creek of England, Ireland, Wales, islands of Guernsey or Jersey, or town of Berwick-upon-Tweed, to another port or creek of the same, or of any of them; under penalty for every one that shall offend contrary to the true meaning of this branch of this present act, to forfeit all such goods as shall be loaden and carried in any such ship or vessel, together with the ship or vessel, and all her guns, ammunition, tackle, furniture, and apparel; one moiety to His Ma-

Penalty.

jesty, his heirs and successors, and the other moiety to him or them that shall inform, seize, or sue for the same in any Court of Record, to be recovered in manner aforesaid.

Ease and abatement in the Book of Rates to extend only where three parts of the mariners be English.

VII. And it is further enacted by the authority aforesaid, that where any ease, abatement, or privilege is given in the book of rates, to goods or commodities imported or exported in English-built shipping, that is to say, shipping built in England, Ireland, Wales, islands of Guernsey or Jersey, or town of Berwick-upon-Tweed, or in any of the lands, islands, dominions, and territories to His Majesty in Africa, Asia, or America, belonging, or in his possession, that it is always to be understood and provided, that the master and three-fourths of the mariners of the said ships at least be also English; and that where it is required that the master and three-fourths of the mariners be English, that the true intent and meaning thereof is, that they should be such during the whole voyage, unless in case of sickness, death, or being taken prisoners in the voyage, to be proved by the oath of the master or other chief officer of such ships.

Goods of the growth or manufacture of Muscovy or Russia.

VIII. And it is further enacted by the authority aforesaid, that no goods or commodities of the growth, production, or manufacture of Muscovy, or of any of the countries, dominions or territories to the Great Duke or Emperor of Muscovy, or Russia belonging, as also that no sort of masts, timber, or boards, no foreign salt, pitch, tar, rosin, hemp, or flax, raisins, figs, prunes, olive-oils, no sorts of corn or grain, sugar, pot-ashes, wines, vinegar, or spirits called *aqua vitæ*, or brandy wine, shall from and after the 1st day of April, which shall be in the year of our Lord 1661, be imported into England, Ireland, Wales, or town of Berwick-upon-Tweed, in any ship or ships, vessel or vessels whatsoever, but in such as do truly and without fraud belong to the people thereof, or some of them, as the true owners and proprietors thereof, and whereof the master and three-fourths of the mariners at least are English. (1) And that no currants nor commodities of the growth, production, or manufacture of any of the countries, islands, dominions, or territories to the Othoman or Turkish empire belonging, shall from and after the 1st day of September, which shall be in the year of our Lord 1661, be imported into any the aforementioned places in any ship or vessel, but which is of English-built, and navigated, as aforesaid, and in no other, except only such foreign ships and vessels as are of the built of that country or place of which the said goods are the growth, production, or manufacture respectively, or of such port where the said goods can only be, or most usually are, first shipped for transportation, and whereof the master and three-fourths of the mariners at least are of the said country or place, under the penalty and forfeiture of ship and goods, to be disposed and recovered as in the foregoing clause.

Of the Othoman or Turkish empire.

Frauds in concealing alien's goods, how to be prevented.

IX. Provided always, and be it hereby enacted by the authority aforesaid, that for the prevention of the great frauds daily used in colouring and concealing of alien's goods, all wines of the growth of France, or Germany, which from and after the 20th day of October, 1660, shall be imported into any of the ports or places aforesaid, in any other ship or vessel than which doth truly and without fraud belong to England, Ireland, Wales, or town of Ber-

wick-upon-Tweed, and navigated with the mariners thereof, as aforesaid, shall be deemed alien's goods, and pay all strangers customs and duties to His Majesty, his heirs and successors, as also to the town or port into which they shall be imported; and that all sorts of masts, timber or boards, as also all foreign salt, pitch, tar, rosin, hemp, flax, raisins, figs, prunes, olive-oils, all sorts of corn or grain, sugar, pot-ashes, spirits commonly called brandy wine, or *aqua vitæ*, wines of the growth of Spain, the islands of the Canaries or Portugal, Madeira, or Western islands; and all the goods of the growth, production or manufacture of Muscovy or Russia, which from and after the 1st day of April, which shall be in the year of our Lord 1661, shall be imported into any the aforesaid places in any other than such shipping, and so navigated; and all currants and Turkey commodities which from and after the 1st day of September, 1661, shall be imported into any the places aforesaid, in any other than English-built shipping, and navigated as aforesaid, shall be deemed alien's goods, and pay accordingly to His Majesty, his heirs and successors, and to the town or port into which they shall be imported.

How to prevent frauds in colouring and buying foreign ships.

X. And for prevention of all frauds which may be used in colouring or buying of foreign ships, be it enacted by the authority aforesaid, and it is hereby enacted, that from and after the 1st day of April, which shall be in the year of our Lord 1661, no foreign-built ship or vessel whatsoever shall be deemed or pass as a ship to England, Ireland, Wales, or town of Berwick, or any of them belonging, or enjoy the benefit or privilege of such a ship or vessel, until such time that he or they claiming the said ship or vessel to be theirs shall make appear to the chief officer or officers of the customs in the port next to the place of his or their abode, that he or they are not aliens, and shall have taken an oath before such chief officer or officers, who are hereby authorized to administer the same, that such ship or vessel was *bonâ fide* and without fraud by him or them bought for a valuable consideration, expressing the sum, as also the time, place, and persons from whom it was bought, and who are his part-owners (if he have any); all which part-owners shall be liable to take the said oath before the chief officer or officers of the custom-house of the port next to the place of their abode, and that no foreigner directly or indirectly hath any part, interest, or share therein; and that upon such oath he or they shall receive a certificate under the hand and seal of the said chief officer or officers of the port where such person or persons so making oath do reside, whereby such ship or vessel may for the future pass and be deemed as a ship belonging to the said port, and enjoy the privilege of such a ship or vessel; and the said officer or officers shall keep a register of all such certificates as he or they shall so give, and return a duplicate thereof to the chief officers of the customs at London, for such as shall be granted in England, Wales, and Berwick; and to the chief officers of the customs at Dublin, for such as shall be given in Ireland, together with the names of the person or persons from whom such ship was bought, and the sum of money which was paid for her, as also the names of all such persons who are part-owners of her, if any such be.

Oath to be administered.

Certificate. Register of certificates to be kept by officer.

Officers of the customs not to allow any privilege to any foreign built ship, until certificate or proof, &c.

XI. And be it further enacted by the authority aforesaid, that if any officers of the customs shall from and after the said 1st day of April, allow the privilege of being a ship or vessel to England, Ireland, Wales, or town of Berwick, or any of them belonging to any foreign-built ship or vessel, until such certificate be before them produced, or such proof and oath taken before them; or if any officer of the customs shall allow the privilege of an English-built-ship, or other ship to any the aforesaid places belonging to any English or foreign-built ship coming into any port, and making entry of any goods, until examination whether the master and three-fourths of the mariners be English; or shall allow to any foreign-built ship bringing in the commodities of the growth of the country where it was built, the privilege by this act to such ship given, until examination and proof whether it be a ship of the built of that country, and that the master and three-fourths of the mariners are of that country; or if any person who is or shall be made governor of any lands, islands, plantations, or territories in Africa, Asia, or America, by His Majesty, his heirs or successors, shall suffer any foreign-built ship or vessel to load or unload any goods or commodities within the precincts of their governments, until such certificate be produced before them, or such as shall be by them appointed to view the same, and examination whether the master and three-fourths of the mariners at least be English; that for the first offence such officer of the customs and governors shall be put out of their places, offices, or governments.

Penalty.

Proviso for goods of the streights, &c.

XII. Provided always, that this act, or any thing therein contained, extend not, or be meant to restrain and prohibit the importation of any the commodities of the streights or Levant Seas, loaden in English-built shipping, and whereof the master and three-fourths of the mariners at least are English, from the usual ports or places for lading of them heretofore within the said streights or Levant Seas, though the said commodities be not of the very growth of the said places.

East India commodities.

XIII. Provided also, that this act, or any thing therein contained, extend not, or be meant, to restrain the importing of any East India commodities loaden in English-built shipping, and whereof the master and three-fourths of the mariners at least are English, from the usual place or places for lading of them in any part of those seas, to the southward and eastward of *Cabo Bona Esperanza*, although the said ports be not the very places of their growth.

Proviso for goods imported from Spain, &c.

XIV. Provided also, that it shall and may be lawful to and for any of the people of England, Ireland, Wales, islands of Guernsey or Jersey, or town of Berwick-upon Tweed, in vessels or ships to them belonging, and whereof the master and three-fourths of the mariners at least are English, to load and bring in from any of the ports of Spain or Portugal, or Western islands, commonly called Azores or Madeira, or Canary islands, all sorts of goods or commodities of the growth, production or manufacture of the plantations or dominions of either of them respectively.

Proviso for bullion, and goods taken by way of reprisal.

XV. Provided that this act, or any thing therein contained, extend not to bullion, nor yet to any goods taken, or that shall be

bonâ fide taken, by way of reprisal by any ship or ships belonging to England, Ireland, or Wales, islands of Guernsey or Jersey, or town of Berwick-upon-Tweed, and whereof the master and three-fourths of the mariners at least are English, having commission from His Majesty, his heirs or successors.

XVI. Provided always, that this act, or any thing therein contained, shall not extend, or be construed to extend, to lay aliens duties upon any corn of the growth of Scotland, or to any salt made in Scotland, nor to any fish caught, saved, and cured by the people of Scotland, and imported directly from Scotland, in Scotch-built ships, and whereof the master and three-fourths of the mariners are of His Majesty's subjects; nor to any seal-oil of Russia, imported from thence into England, Ireland, Wales, or town of Berwick-upon-Tweed, in shipping *bonâ fide* to some of the said places belonging, and whereof the master and three-fourths of the mariners at least are English.

Proviso concerning goods of Scotland.

Goods of Russia.

XVII. Provided also, and it is hereby enacted, that every ship or vessel belonging to any the subjects of the French king, which from and after the 20th day of October, in the year of our Lord 1660, shall come into any port, creek, harbour, or road of England, Ireland, Wales, or town of Berwick-upon-Tweed, and shall there lade or unlade any goods or commodities, or take in or set on shore any passengers, shall pay to the collector of His Majesty's customs in such port, creek, harbour, or road, for every ton of which the said ship or vessel is of burthen, to be computed by such officer of the customs as shall be thereunto appointed, the sum of five shillings current money of England; and that no such ship or vessel be suffered to depart out of such port, creek, harbour, or road, until the said duty be fully paid; and that this duty shall continue to be collected, levied, and paid, for such time as a certain duty of fifty sols per ton, lately imposed by the French king, or any part thereof, shall continue to be collected upon the shipping of England lading in France, and three months after, and no longer.

The duty payable upon goods in French ships.

How long to continue.

XVIII. And it is further enacted by the authority aforesaid, that from and after the 1st day of April, which shall be in the year of our Lord 1661, no sugars, tobacco, cotton wool, indigoes, ginger, fustick, or other dyeing woods, of the growth, production, or manufacture of any English plantations in America, Asia, or Africa, shall be shipped, carried, conveyed, or transported, from any of the said English plantations, to any land, island, territory, dominion, port or place whatsoever, other than to such other English plantations as do belong to His Majesty, his heirs and successors, or to the kingdom of England, or Ireland, or principality of Wales, or town of Berwick-upon-Tweed, there to be laid on shore, under the penalty of the forfeiture of the said goods, or the full value thereof, as also of the ship, with all her guns, tackle, apparel, ammunition, and furniture; the one moiety to the King's Majesty, his heirs and successors, and the other moiety to him or them that shall seize, inform or sue for the same in any Court of Record, by bill, plaint, or information, wherein no essoin, protection, or wager of law shall be allowed.

Sugar, &c. of the plantations.

XIX. And be it further enacted by the authority aforesaid, that for every ship or vessel, which from and after the 25th day of

Regulations as to bonds given by ships to

bring goods loaded in the plantations into England.

December, in the year of our Lord 1660, shall set sail out or from England, Ireland, Wales, or town of Berwick-upon-Tweed, for any English plantation in America, Asia, or Africa, sufficient bond shall be given with one surety to the chief officers of the custom-house of such port or place from whence the said ship shall set sail, to the value of one thousand pounds, if the ship be of less burthen than one hundred tons; and of the sum of two thousand pounds, if the ship shall be of greater burthen; that in case the said ship or vessel shall load any of the said commodities at any of the said English plantations, that the same commodities shall be by the said ship brought to some port of England, Ireland, Wales, or to the port or town of Berwick-upon-Tweed, and shall there unload and put on shore the same, the danger of the seas only excepted; and for all ships coming from any port or place to any of the aforesaid plantations, who by this act are permitted to trade there, that the governor of such English plantations shall, before the said ship or vessel be permitted to load on board any of the said commodities, take bond in manner, and to the value aforesaid, for each respective ship or vessel, that such ship or vessel shall carry all the aforesaid goods, that shall be laden on board in the said ship to some other of His Majesty's English plantations, or to England, Ireland, Wales, or town of Berwick-upon-Tweed; and that every ship or vessel which shall load or take on board any of the aforesaid goods, until such bond given to the said governor or certificate produced, from the officers of any custom-house of England, Ireland, Wales, or of the town of Berwick, that such bonds have been there duly given, shall be forfeited, with all her guns, tackle, apparel, and furniture, to be employed and recovered in manner, as aforesaid; and the said governors and every of them shall twice in every year after the 1st day of January, 1660, return true copies of all such bonds by him so taken, to the chief officers of the customs in London.

15 Car. II. c. 7.

An Act for the Encouragement of Trade.

Plantations beyond the Seas.

V. And in regard His Majesty's plantations beyond the seas are inhabited and peopled by his subjects of this his kingdom of England, for the maintaining a greater correspondence and kindness between them, and keeping them in a firmer dependance upon it, and rendering them yet more beneficial and advantageous unto it in the further employment and increase of English shipping and seamen, vent of English woollen and other manufactures and commodities, rendering the navigation to and from the same more safe and cheap, and making this kingdom a staple, not only of the commodities of those plantations, but also of the commodities of other countries and places, for the supplying of them; and it being the usage of other nations to keep their plantations' trade to themselves:—

VI. Be it enacted, and it is hereby enacted, That from and after the 25th day of March, 1664, no commodity of the growth, production, or manufacture of Europe, shall be imported into any land, island, plantation, colony, territory, or place to His Majesty belonging, or which shall hereafter belong unto, or be in the possession of His Majesty, his heirs and successors, in Asia, Africa, or America, (Tangier only excepted,) but what shall be *bonâ fide*, and without fraud, laden and shipped in England, Wales, or the town of Berwick-upon-Tweed, and in English-built shipping, or which were *bonâ fide* bought before the 1st day of October, 1662, and had such certificate thereof as is directed in one act passed the last sessions of this present parliament, intituled, An Act for preventing frauds, and regulating abuses in His Majesty's customs; and whereof the master and three-fourths of the mariners at least are English, and which shall be carried directly thence to the said lands, islands, plantations, colonies, territories, or places, and from no other place or places whatsoever; any law, statute or usage to the contrary notwithstanding; (2) under the penalty of the loss of all such commodities of the growth, production or manufacture of Europe, as shall be imported into any of them from any other place whatsoever, by land or water; and if by water, of the ship or vessel also in which they were imported, with all her guns, tackle, furniture, ammunition, and apparel; one third part to His Majesty, his heirs and successors; one third part to the governor of such land, island, plantation, colony, territory or place into which such goods were imported, if the said ship, vessel or goods be there seized or informed against and sued for; or otherwise, that third part also to His Majesty, his heirs and successors; and the other third part to him or them who shall seize, inform or sue for the same in any of His Majesty's courts in such of the said lands, islands, colonies, plantations, territories or places where the offence was committed, or in any court of record in England, by bill, information, plaint or other action, wherein no essoin, protection or wager in law shall be allowed.

Commodities of the growth and manufacture of Europe, how to be imported in English-built shipping. Repealed as to Irish linen, by 3 & 4 Annæ, c. 8. s. 1.

13 & 14 Car. II. c. 11.

The penalty.

VII. Provided always, and be it hereby enacted by the authority aforesaid, that it shall and may be lawful to ship and lade in such ships, and so navigated as in the foregoing clause is set down and expressed in any part of Europe, salt for the fisheries of New England and Newfoundland, and to ship and lade in the Madeira's wines of the growth thereof; and to ship and lade in the Western Islands of Azores wines of the growth of the said islands; and to ship and take in servants or horses in Scotland or Ireland, and to ship or lade in Scotland all sorts of victual of the growth or production of Scotland, and to ship or lade in Ireland all sorts of victual of the growth or production of Ireland, and the same to transport into any of the said lands, islands, plantations, colonies, territories or places; any thing in the foregoing clause to the contrary in any wise notwithstanding.

Salt for Fisheries.

13 Geo. I. c. 5.

VIII. And for the better prevention of frauds, Be it enacted, and it is hereby enacted, that from and after the 25th of March, 1664, every person or persons importing by land any goods or commodities whatsoever, into any the said lands, islands, plantations, colonies, territories or places, shall deliver to the governor

Prevention of frauds.

of such land, island, plantation, colony, territory or place, or to such person or officer as shall be by him thereunto authorised and appointed, within four-and-twenty hours after such importation, his and their names and sirnames, and a true inventory and particular of all such goods or commodities: (2) and no ship or vessel coming to any such land, island, plantation, colony, territory or place, shall lade or unlade any goods or commodities whatsoever, until the master or commander of such ship or vessel shall first have made known to the governor of such land, island, plantation, colony, territory or place, or such other person or officer as shall be by him thereunto authorized and appointed, the arrival of the said ship or vessel, with her name, and the name and sirname of her master or commander, and have shewn to him that she is an English-built ship, or made good by producing such certificate, as above said, that she is a ship or vessel *bonâ fide* belonging to England, Wales, or the town of Berwick, and navigated with an English master, and three-fourth parts of the mariners at least Englishmen, and have delivered to such governor or other person or officer a true and perfect inventory or invoice of her lading, together with the place or places in which the said goods were laden or taken into the said ship or vessel; (3) under the pain of the loss of the ship or vessel, with all her guns, ammunition, tackle, furniture and apparel, and of all such goods of the growth, production or manufacture of Europe as were not *bonâ fide* laden and taken in in England, Wales, or the town of Berwick, to be recovered and divided in manner aforesaid; (4) and all such as are governors or commanders of any the said lands, islands, plantations, colonies, territories or places, (Tangier only excepted,) shall before the 25th of March, 1664, and all such as shall hereafter be made governors or commanders of any of them, shall before their entrance upon the execution of such trust or charge, take a solemn oath before such person or persons as shall be authorized by His Majesty, his heirs and successors, to administer the same, to do their utmost within their respective governments or commands, to cause to be well and truly observed what is in this act enacted, in relation to the trade of such lands, islands, plantations, colonies, territories and places, under the penalty of being removed out of their respective governments and commands: (5) And if any of them shall be found, after the taking of such oath, to have wittingly and willingly offended contrary to what is by this act required of them, that they shall for such offence be turned out of their governments, and be uncapable of the government of any other land, island, plantation or colony; and moreover, forfeit the sum of one thousand pounds of lawful money of England; the one moiety to His Majesty, his heirs and successors; and the other moiety to him or them that shall inform or sue for the same in any of His Majesty's courts in any of the said plantations, or in any court of record in England, wherein no essoin, protection or wager of law shall be allowed.

Farther provided for by 7 & 8 W. III. c. 22. s. 5.

Penalty upon officers of the customs.

IX. And it is hereby further enacted, That if any officer of the customs in England, Wales, or town of Berwick-upon-Tweed, shall give any warrant for, or suffer any sugar, tobacco, ginger, cotton-wool, indigo, speckle-wood or Jamaica-wood, fustick or

other dyeing-wood of the growth of any of the said lands, islands, colonies, plantations, territories or places, to be carried into any other country or place whatsoever, until they have been first unladen *bonâ fide*, and put on shore in some port, or laden in England or Wales, or in the town of Berwick, that every such officer for such offence shall forfeit his place, and the value of such of the said goods as he shall give warrant for, or suffer to pass into any other country or place; the one moiety to His Majesty, his heirs and successors; and the other moiety to him or them that shall inform or sue for the same in any Court of Record in England or Wales, wherein no essoin, protection or wager in law shall be allowed.

X. And for the better encouragement of the said plantations, and the increase of the shipping and navigation of this kingdom, (2) Be it enacted, and it is hereby enacted by the authority aforesaid, that from and after the 25th day of March, 1664, it shall and may be lawful out of any port of England or Wales, or out of the town of Berwick, to ship and lade sea-coals for any part of them, paying for the chalder, Newcastle-measure, one shilling and eight pence; and for the chalder, London measure, one shilling, and no more; in full of all custom and poundage for the same; any law, statute or prohibition to the contrary in any wise notwithstanding.

Encouragement of plantations, and increase of shipping. Altered by 9 Annæ, cap. 6. s. 7.

XI. Provided, that such sea-coals be shipped in such shipping, and so navigated, as above said; and that good security be given to the officers of the custom in such port in which they are shipped, for the landing them in the said plantations, and not elsewhere.

XVI. And for the encouragement of the herring and North-sea, Island, and Westmony fisheries, (2) Be it enacted, and it is hereby enacted by the authority aforesaid, that from and after the 1st day of August, which shall be in the year of our Lord 1664, no fresh herring, fresh cod or haddock, coal-fish or gull-fish, shall be imported into England, Wales, or the town of Berwick, but in English-built ships or vessels, or in ships or vessels *bonâ fide* belonging to England, Wales, or the town of Berwick; and having such certificate thereof as is above said, and whereof the master and three-fourths, at the least of the mariners are English, and which hath been fished, caught and taken in such ships or vessels, and so navigated, and not being bought or had of any strangers born, or out of any strangers' bottoms, under the pain of the forfeiture of all such herring, cod, haddock, coal-fish or gull-fish imported contrary to the true intent and meaning hereof, and of the ship or vessel in which it was imported; (3) one moiety of which forfeitures shall be to His Majesty, his heirs and successors; and the other moiety to him or them that shall inform, seize or sue for the same, to be recovered by bill, plaint or other action, wherein no essoin, protection or wager in law shall be allowed.

Encouragement of herring fisheries. Altered by 1 Geo. I. st. 2. c. 18. s. 1.

XVII. And be it further enacted, and it is hereby enacted by the authority aforesaid, that for the following sorts or kinds of salted or dried fish, which from and after the said 1st day of August shall be imported into England, Wales, or the town of Berwick, in any other ship or vessel than what is English-built, or belonging to England, Wales, or town of Berwick; and having

Duties to be paid upon importation of salted or dried fish.

such certificate thereof as above said, and whereof the master and three-fourths of the mariners at least are English, and not having been fished and caught in such ships or vessels, and so navigated, there shall be paid by way of custom and impost the several sums of money hereinafter particularly mentioned, (that is to say,) for cod-fish the barrel, five shillings; for cod-fish the last, containing twelve barrels, three pounds; for cod-fish the hundred, containing six-score, ten shillings; for coal-fish the hundred, containing six-score, five shillings; for lings the hundred, containing six score, one pound; for white herrings the last, containing twelve barrels, one pound sixteen shillings; for haddocks the barrel, two shillings; for gull-fish the barrel, two shillings.

The further penalty for planting tobacco in England. 12Car. II. c. 34.

XVIII. And forasmuch as planting and making tobacco within the kingdom of England doth continue and increase, to the apparent loss of his said Majesty in his customs, the discouragement of the English plantations in the parts beyond the seas, and prejudice of this kingdom in general, notwithstanding an act of parliament made in the twelfth year of his said Majesty's reign for prevention thereof, intituled, An Act for prohibiting the Planting, Setting or Sowing of Tobacco in England and Ireland: (2) And forasmuch as it is found by experience, that the reason why the said planting and making of tobacco doth continue is, That the penalties prescribed and appointed by that law are so little, as have neither power or effect over the transgressors thereof; (3) For remedy therefore of so great an evil, Be it enacted by the authority aforesaid, that all and every the person or persons whatsoever that do, or shall at any time hereafter, set, plant or sow any tobacco in seed, plant or otherwise, in or upon any ground, field, earth or place within the kingdom of England, dominion of Wales, islands of Guernsey and Jersey, or town of Berwick-upon-Tweed, or kingdom of Ireland, shall over and above the penalty of the said act for that purpose ordained for every such offence forfeit and pay the sum of ten pounds for every rod or pole of ground that he or they shall so plant, set or sow with tobacco, and so proportionably for a greater or lesser quantity of ground; one-third part thereof to the King's Majesty; one other third part thereof to the use of the poor of such respective parish or parishes wherein such tobacco shall be so planted, set or sowed, and the other third part thereof to him or them that shall sue for the same, to be recovered by action of debt, bill, plaint or information in any of his said Majesty's Courts of Record at Westminster, wherein no essoin, protection or wager of law shall be allowed.

7 & 8 WILL. III. c. 22.

An Act for preventing Frauds, and Regulating Abuses in the Plantation Trade.

WHEREAS notwithstanding divers acts made for the encouragement of the navigation of this kingdom, and for the better securing and regulating the plantation trade, more especially one act of parliament made in the twelfth year of the reign of the late King Charles the Second, intituled, An Act for increasing of Shipping and Navigation; another Act made in the fifteenth year of the reign of his said late Majesty, intituled, An Act for the Encouragement of Trade; another Act made in the two and twentieth and three and twentieth years of his said late Majesty's reign, intituled An Act to prevent the planting of Tobacco in England, and for regulating the Plantation Trade; another Act made in the twenty-fifth year of the reign of his said late Majesty, intituled, An Act for the Encouragement of the Greenland and Eastland Trades, and for the better securing the Plantation Trades; great abuses are daily committed, to the prejudice of the English Navigation, and the loss of a great part of the Plantation Trade to this Kingdom, by the artifice and cunning of ill-disposed persons: For remedy whereof for the future,

12 Car. II. c. 18.

15 Car. II. c. 7.

22 & 23 Car. II. c. 26.

25 Car. II. c. 7.

Goods not to be imported or exported to or from the plantations but in ships built in England, Ireland, or in the plantations.

II. Be it enacted, and it is hereby enacted and ordained by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons in Parliament assembled, and by the authority of the same, That after the 25th day of March, 1698, no goods or merchandizes whatsoever shall be imported into, or exported out of, any colony or plantation to His Majesty in Asia, Africa, or America, belonging or in his possession, or which may hereafter belong unto, or be in the possession of His Majesty, his heirs or successors, or shall be laden in, or carried from, any one port or place in the said colonies or plantations to any other port or place in the same, the kingdom of England, dominion of Wales, or town of Berwick-upon-Tweed, in any ship or bottom but what is, or shall be of the built of England, or of the built of Ireland, or the said colonies or plantations, and wholly owned by the people thereof, or any of them, and navigated with the masters and three-fourths of the mariners of the said places only (except such ships only as are or shall be taken as prize, and condemnation thereof made in one of the Courts of Admiralty in England, Ireland, or the said colonies or plantations, to be navigated by the master and three-fourths of the mariners English, or of the said plantations as aforesaid, and whereof the property doth belong to Englishmen: And also except, for the space of three years, such foreign-built ships as shall be employed by the commissioners of His Majesty's navy

Except Prize Ships, and Foreign Ships employed for three years to bring in naval stores.

for the time being, or upon contract with them, in bringing only masts, timber, and other naval stores for the king's service, from His Majesty's colonies or plantations to this kingdom, to be navigated as aforesaid, and whereof the property doth belong to Englishmen) under pain of forfeiture of ship and goods; one third part whereof to be to the use of His Majesty, his heirs, and successors, one third part to the governor of the said colonies or plantations, and the other third part to the person who shall inform and sue for the same, by bill, plaint, or information, in any of His Majesty's Courts of Record at Westminster, or in any Court in His Majesty's plantations, where such offence shall be committed.

Penalty.

Goods may be imported and exported in Prize Ships, the master and three-fourths of the mariners being English.

III. And be it further enacted by the authority aforesaid, That (from and after the said five and twentieth day of March) goods or merchandizes may be exported or imported to and from this kingdom, the colonies, plantations, and places aforesaid, in any such ships as are or shall be taken as prize, and whereof condemnation shall be made in one of the Courts of Admiralty aforesaid; and shall be navigated as aforesaid by the master, three-fourths of the mariners English, and whereof the property shall belong to Englishmen; and also masts, timber, and other naval stores for His Majesty's service, for the space of three years, may be imported from His Majesty's colonies or plantations to this kingdom in such foreign built ships as shall be employed by the commissioners of the navy for the time being, or by contract with them; any law or statute to the contrary notwithstanding.

12 Car. II. c. 18.

IV. And whereas by one clause in the said act passed in the twelfth year of the reign of the late King Charles the Second, intituled An Act for the encouraging and increasing of Shipping and Navigation, all Governors of His Majesty's colonies or plantations in Asia, Africa, or America, are required to take a solemn oath to do their utmost that every the clauses thereinbefore-mentioned, and all the matters and things therein contained, shall be punctually and *bonâ fide* observed, according to the true intent and meaning thereof, so that the said Governors are not strictly obliged by that oath to put in execution the subsequent clauses of the said act, although some of the clauses following are of great importance, and tend greatly to the security of the Plantation Trade: And whereas divers other good laws have been made for the better regulating and securing the Plantation Trade since the last-mentioned Act; be it further enacted by the authority aforesaid, That all the present Governors and Commanders in Chief of any English Colonies or Plantations shall, before the 25th day of March, 1697, and all who hereafter shall be made governors or commanders in chief of the said colonies or plantations, or any of them, before their entrance into their government, shall take a solemn oath to do their utmost, that all the clauses, matters and things contained in the before-recited acts of parliament heretofore passed and now in force, relating to the said colonies and plantations, and that all and every the clauses contained in this present act be punctually and *bonâ fide* observed, according to the true intent and meaning thereof (which oath shall be taken before such person or persons as shall be appointed by His Majesty, his heirs and successors, who are hereby authorized to

13 & 14 Car. II. c. 11.

4 & 5 W. & M. c. 17.

Governors of English plantations to take an oath to observe all the clauses in this and the other acts relating to the said plantations. Farther provided for by 8 & 9 W. III. c. 20. s. 69.

administer the same) so far as appertains unto the said governors or commanders in chief respectively; and upon complaint and proof made before His Majesty, his heirs and successors, or such as shall be by him or them thereunto authorized and appointed by the oath of two or more credible witnesses, that any the said governors or commanders in chief have neglected to take the said oath at the times aforesaid, or have been wittingly or willingly negligent in doing their duty accordingly, the said governor so neglecting or offending shall be removed from his government, and forfeit the sum of one thousand pounds sterling.

On neglect to be removed from his Government, and forfeit 1000*l.*

V. And whereas by the said act of the fifteenth of King Charles the Second, intituled An Act for the Encouragement of Trade, the governors of the plantations are empowered to appoint an officer for the performance of certain things in the said act mentioned, which said officer is there commonly known by the name of the Naval Officer; and whereas, through the connivance or negligence of the persons so appointed by the governors of the said plantations, divers frauds and abuses are or have been committed; be it therefore enacted by the authority aforesaid, that all and every the said officers already appointed shall within two months after notice of this act in the respective plantations, or as soon as conveniently it may be, give security to the commissioners of the customs in England for the time being, or such as shall be appointed by them, for His Majesty's use, for the true and faithful performance of their duty; and all and every person or persons who shall hereafter be appointed to the said office or employment, shall within two months, or as soon as conveniently it may be, after his or their entrance upon the said office or employment, give sufficient security to the commissioners of the customs, as aforesaid, for His Majesty's use, for the true and faithful performance of his or their duty; and in default thereof the person or persons neglecting or refusing to give such security, shall be disabled to execute the said office or employment; and until such security given, and the person appointed to the said office or employment be approved by the commissioners of the customs, as aforesaid, the respective governor or governors shall be answerable for any the offences, neglects or misdemeanors of the person or persons so by him or them appointed.

15 Car. II. c. 7.

Naval officers in the plantations to give security to the commissioners of the customs in England for performance of their duty, and in default to be disabled.

Governors in the *interim* to be answerable.

VI. And for the more effectual preventing of frauds, and regulating abuses in the plantation trade in America, be it further enacted by the authority aforesaid, That all ships coming into, or going out of any of the said plantations, and lading or unlading any goods or commodities, whether the same be His Majesty's ships of war or merchants' ships, and the masters and commanders thereof, and their ladings, shall be subject and liable to the same rules, visitations, searches, penalties and forfeitures, as to the entering, lading, or discharging their respective ships and ladings, as ships and their ladings, and the commanders and masters of ships are subject and liable unto in this kingdom, by virtue of an act of parliament made in the fourteenth year of the reign of King Charles the Second, intituled An Act for preventing Frauds, and regulating Abuses in His Majesty's Customs: And that the officers for collecting and managing His Majesty's revenue, and inspecting the plantation trade in any of the said plantations, shall have the

Ships coming into, or going out of, the plantation, liable to the same rules, &c. as ships in England, by 14 Car. II. c. 11.

And officers of the revenue there to have the same pow-

ers as officers of the customs in England.

same powers and authorities for visiting and searching of ships, and taking their entries, and for seizing and securing or bringing on shore any of the goods prohibited to be imported or exported into or out of any the said plantations, or for which any duties are payable, or ought to have been paid by any of the before-mentioned acts, as are provided for the officers of the customs in England by the said last-mentioned act, made in the fourteenth year of the reign of King Charles the Second, and also to enter houses or warehouses, to search for and seize any such goods; and that all the wharfingers, and owners of keys and wharfs, or any lightermen, bargemen, watermen, porters, or other persons assisting in the conveyance, concealment, or rescue of any of the said goods, or in the hindering or resistance of any of the said officers in the performance of their duty, and the boats, barges, lighters, or other vessels employed in the conveyance of such goods, shall be subject to the like pains and penalties as are provided by the same act made in the fourteenth year of the reign of King Charles the Second, in relation to prohibited or uncustomed goods in this kingdom; and that the like assistance shall be given to the said officers in the execution of their office, as by the said last-mentioned act is provided for the officers in England: and also that the said officers shall be subject to the same penalties and forfeitures for any corruptions, frauds, connivances, or concealments, in violation of any the before-mentioned laws, as any officers of the customs in England are liable to, by virtue of the said last-mentioned act; and also that in case any officer or officers in the plantations shall be sued or molested for any thing done in the execution of their office, the said officer shall and may plead the general issue, and shall give this or other custom acts in evidence, and the judge to allow thereof, have and enjoy the like privileges and advantages as are allowed by law to the officers of His Majesty's customs in England.

Penalty on wharfingers, &c. assisting in concealment or rescue of goods.

Assistance to be given the officers, and officers subject to the same penalties as by 13 & 14 Car. II. c. 11.

General issue.

One third of the forfeitures to be to the King, another to the governor of the plantation, and the other to the prosecutor.

VII. And it is hereby further enacted, That all the penalties and forfeitures before mentioned, not in this act particularly disposed of, shall be one third part to the use of His Majesty, his heirs and successors, and one-third part to the governor of the colony or plantation where the offence shall be committed, and the other third part to such person or persons as shall sue for the same, to be recovered in any of His Majesty's Courts at Westminster, or in the kingdom of Ireland, or in the Court of Admiralty, held in His Majesty's plantations respectively, where such offence shall be committed, at the pleasure of the officer or informer, or in any other plantation belonging to any subject of England, wherein no essoin, protection, or wager of law, shall be allowed; and that where any question shall arise concerning the importation or exportation of any goods into or out of the said plantations, in such case the proof shall lie upon the owner or claimer, and the claimer shall be reputed the importer or owner thereof.

Proof to lie on the owner.

VIII. And whereas in some of His Majesty's American plantations a doubt or misconstruction has arisen upon the before-mentioned act, made in the five and twentieth year of the reign of King Charles the Second, whereby certain duties are laid upon the commodities therein enumerated, (which by law may be transported

25 Car. II. c. 7.

from one plantation to another for the supply of each other's wants) as if the same were, by the payment of those duties in one plantation, discharged from giving the securities intended by the aforesaid acts, made in the twelfth, two and twentieth, and three and twentieth years of the reign of King Charles the Second, and consequently be at liberty to go to any foreign market in Europe, without coming to England, Wales, or Berwick; It is hereby further enacted and declared, That, notwithstanding the payment of the aforesaid duties in any of the said plantations, none of the said goods shall be shipped or laden on board, until such security shall be given as is required by the said acts, made in the twelfth, two and twentieth, and three and twentieth years of the reign of King Charles the Second, to carry the same to England, Wales, or Berwick, or to some other of His Majesty's plantations, and so *toties quoties* as any of the said goods shall be brought to be re-shipped or laden in any of the said plantations, under the penalty and forfeiture of ship and goods, to be divided and disposed of as aforesaid.

No goods to be shipped, though duties paid in the plantations, until security be given as required by 12 Car. II. c. 18, & 22 & 23 Car. II. c. 26. on forfeiture of ship and goods.

IX. And it is further enacted and declared by the authority aforesaid, That all laws, bye-laws, usages, or customs, at this time, or which hereafter shall be in practice, or endeavoured or pretended to be in force or practice in any of the said plantations, which are in any-wise repugnant to the before-mentioned laws, or any of them, so far as they do relate to the said plantations, or any of them, or which are any ways repugnant to this present act, or to any other law hereafter to be made in this kingdom, so far as such law shall relate to and mention the said plantations, are illegal, null, and void, to all intents and purposes whatsoever.

Laws, bye-laws, &c. of plantations, repugnant to this act, to be void.

X. And whereas great frauds and abuses have been committed by Scotchmen, and others, in the plantation trade, by obtruding false and counterfeit certificates upon the governor and officers in the plantations, appointed by His Majesty's commissioners of the customs in England, of having given security in this kingdom to bring the ladings of plantation goods to England, Wales, or town of Berwick-upon-Tweed, as also certificates of having discharged their lading of plantation goods in this kingdom, pursuant to securities taken in the plantation, and also cockets or certificates of having taken in their ladings of European goods in England, Wales, or Berwick; by means whereof they may carry the goods of Scotland, and other places of Europe, without shipping or lading the same in England, Wales, or Berwick, to His Majesty's plantations, and also carry the goods of the plantations directly to Scotland, or to any other market in Europe, without bringing the same into England, Wales, or town of Berwick-upon-Tweed: It is hereby further enacted, That in such cases where the governor or officers appointed by the commissioners of the customs in the plantations shall have reasonable ground of suspicion that such certificates are false or counterfeit (that is to say) that the certificate of having given security in England is false, in such case the governor or officers appointed by the commissioners of the customs shall require and take sufficient security there for the diacharge of the plantation lading in England, Wales, or town of Berwick-upon-Tweed; and in such case where there shall be cause to sus-

Officers suspecting certificate, to take security for discharge of the plantation lading, and not to cancel certificate till informed of the truth.

pect that the certificate of having discharged her lading of plantation goods in this kingdom is false or counterfeit, the governor or officers aforesaid shall not cancel or vacate the security given in the plantation, until he or they shall be informed from the commissioners of the customs in England that the matter of the said certificate is true; and if any person or persons shall counterfeit, rase, or falsify any cocket, certificate, return, or permit, for any vessel, or goods, or shall knowingly or willingly make use thereof, such person or persons shall forfeit the sum of five hundred pounds, to be recovered and disposed of as aforesaid; and the cocket, certificate, return, or permit, so counterfeited, rased, or falsified, shall be invalid, and of no effect.

Penalty on persons counterfeiting cockets, &c.

Treasury and commissioners of customs may appoint officers in any town, port, &c. in the islands, &c.

XI. And for the better executing the several acts of parliament relating to the plantation trade, be it enacted by the authority aforesaid, That the lord treasurer, commissioners of the treasury, and the commissioners of the customs in England for the time being, shall and may constitute and appoint such and so many officers of the customs in any city, town, river, port, harbour, or creek, of or belonging to any of the islands, tracts of land, and proprieties, when and as often as to them shall seem needful. Be it further also enacted, That upon any actions, suits, and informations, that shall be brought, commenced, or entered, in the said plantations, upon any law or statute concerning His Majesty's duties, or ships or goods to be forfeited by reason of any unlawful importations or exportations, there shall not be any jury, but of such only as are natives of England, or Ireland, or are born in His Majesty's said plantation; and also that upon all such actions, suits, and informations, the offences may be laid or alleged to be in any colony, province, county, precinct, or division of any of the said plantations where such offences are alleged to be committed, at the pleasure of the officer or informer.

If actions brought in plantations, jury to be natives of England, Ireland, or Plantations.

Offence to be laid in any Colony thereof.

Places of trust to be in the hands of the natives.

XII. Provided always, That all places of trust in the Courts of Law, or what relates to the treasury of the said islands, shall, from the making of this act, be in the hands of the native-born subjects of England or Ireland, or of the said islands.

XIII. And whereas, by the said act made in the two and twentieth and three and twentieth years of the reign of his said late Majesty King Charles the Second, the bonds required to be given in the plantations by virtue of the said act, for encouraging and increasing of shipping and navigation, are altered, and the word Ireland to be left out of the condition of all such bonds; and by the said act it is enacted and provided, That for such ships or vessels coming from other ports or places, to any of the said plantations, which by the said act for encouraging and increase of shipping were permitted to trade there, the governors of such English plantations should, before the said ship or vessel should be permitted to load on board any of the commodities in the said act particularly mentioned, take bond in manner and to the value mentioned and directed in the above mentioned act for encouraging and increase of shipping and navigation, for each respective ship or vessel, that such ship or vessel shall carry all the aforesaid goods, that should be laden on board in the said ship, to some other of His Majesty's English plantations, or to England, Wales, or town

of Berwick-upon-Tweed: But because no provision hath hitherto been made for the returning and producing certificates within some reasonable limited time, of the landing and discharging such goods, according to the condition of the said bonds; and also, because many times it hath happened that the sureties taken in the said bonds have been persons not resident in the said plantations, but of uncertain and unknown abodes, the said bonds have proved ineffectual to the good purposes intended by the said acts: Be it therefore enacted, by the authority aforesaid, That in all such bonds, to be hereafter given or taken in the said plantations, the sureties therein named shall be persons of known residence and ability in the said plantations, for the value mentioned in the said bonds, and that the condition of the said bonds shall be within eighteen months after the date thereof (the danger of the seas excepted) to produce certificate of having landed and discharged the goods therein-mentioned, in one of His Majesty's said plantations, or in England, Wales, or Berwick-upon-Tweed; otherwise such bond or copies thereof, being attested under the hand and seal of the governor or commander in chief to whom such bonds were given, shall be in force, and allowed of in any court in England, Ireland, or the plantations, as if the original were produced in Court by the prosecutor.

Bonds given in plantations, sureties to be of ability.

Condition of the bonds.

Farther provisions relating to such bonds, by 8 Annæ, c. 13. s. 23.

XIV. And whereas several ships and vessels laden with tobacco, sugars, and other goods of the growth and product of His Majesty's plantations in America, have been discharged in several ports of the kingdoms of Scotland and Ireland, contrary to the laws and statutes now in being, under pretence that the said ships and vessels were driven in thither by stress of weather; or, for want of provisions, and other disabilities, could not proceed on their voyage: For remedy whereof be it enacted by the authority aforesaid, That from and after the 1st day of December, 1696, it shall not be lawful, on any pretence whatsoever, to put on shore in the said kingdoms of Scotland or Ireland any goods or merchandize of the growth or product of any of His Majesty's plantations aforesaid, unless the same have been first landed in the kingdom of England, dominion of Wales, or town of Berwick-upon-Tweed, and paid the rates and duties wherewith they are chargeable by law, under the penalty of the forfeiture of the ship and goods; three-fourths, without composition, to His Majesty, his heirs and successors, and the other fourth to him or them that shall sue for the same.

Product of the plantations not to be put ashore in Scotland or Ireland, unless duties be first paid in England.

XV. Provided nevertheless, That if any ship or vessel, laden as aforesaid, shall by stress of weather be stranded, or by reason of leakiness, or other disability, shall be driven into any port or place within the kingdom of Ireland, and shall not be able to proceed on her voyage; then, and in such case only, the said goods and merchandizes may be permitted to be put on shore, but shall be delivered into the custody and possession of the collector or chief officer of the customs of such port or place where the said ship shall be so stranded or driven into, there to remain until the said goods and merchandize shall, at the charge of the owner thereof, be put on board some other ship or vessel, in order to be transported and carried to some other port or place within the said kingdom of England, dominion of Wales, or town of Berwick-

If ship stranded in Ireland, goods may be put ashore, and kept in custody of the officer of the customs, till shipped again for England.

Officer to take security for delivery.

upon-Tweed, the said officer first taking good and sufficient security for the delivery of the same, according to the true intent and meaning of this act.

Persons not to sell land in America but to subjects of England, &c.

XVI. And be it further enacted by the authority aforesaid, That all persons and their assignees, claiming any right or propriety in any islands or tracts of land upon the continent of America, by charter or letters patent, shall not at any time hereafter alien, sell, or dispose of any of the said islands, tracts of land, or proprieties, other than to the natural-born subjects of England, Ireland, dominion of Wales, and town of Berwick-upon-Tweed, without the licence and consent of His Majesty, his heirs and successors, signified by his or their Order in Council first had and obtained; and all governors nominated and appointed by any such persons or proprietors, who shall be entitled to make such nomination, shall be allowed and approved of by His Majesty, his heirs and successors, as aforesaid, and shall take the oaths enjoined by this or any other act, to be taken by the governors or commanders in chief, in other His Majesty's colonies and plantations, before their entering upon their respective governments, under the like penalty as His Majesty's governors and commanders in chief are by the said acts liable to.

Governors to be approved of by the King, and to take the oaths.

Penalty.

English built ships to be registered, and proof made on oath before the collector of the customs.

XVII. And for a more effectual prevention of frauds which may be used to elude the intention of this act, by colouring foreign ships under English names: Be it further enacted by the authority aforesaid, That from and after the 25th day of March, which shall be in the year of our Lord 1698, no ship or vessel whatsoever shall be deemed or pass as a ship of the built of England, Ireland, Wales, Berwick, Guernsey, Jersey, or any of His Majesty's plantations in America, so as to be qualified to trade to, from, or in, any of the said plantations, until the person or persons claiming property in such ship or vessel shall register the same as followeth, that is to say, If the ship at the time of such register doth belong to any port in England, Ireland, Wales, or to the town of Berwick-upon-Tweed, then proof shall be made upon oath of one or more of the owners of such ship or vessel, before the collector and comptroller of His Majesty's customs of such port; or if at the time of such register the ship belong to any of His Majesty's plantations in America, or to the islands of Guernsey or Jersey; then the like proof to be made before the governor, together with the principal officer of His Majesty's revenue residing on such plantation or island, which oath the said governors and officers of the customs respectively are hereby authorized to administer in the tenor following, *viz.*

Or, if belonging to America, &c. before the governor, &c.

The oath.

JURAT' A. B. That the Ship [Name] of [Port] whereof [Master's Name] is at present Master, being a [Kind of Built] of [Burthen] Tuns, was built at [Place where] in the Year [Time when] and that [Owner's Name] of and of, &c. are at present Owners thereof; and that no Foreigner, directly or indirectly, hath any Share, or Part, or interest therein.

Oath to be attested by the

XVIII. Which oath, being attested by the governor, or custom

officer respectively, who administered the same under their hands and seals, shall, after having been registered by them, be delivered to the master of the ship for the security of her navigation, a duplicate of which register shall be immediately transmitted to the commissioners of His Majesty's customs in the port of London, in order to be entered in a general register, to be there kept for this purpose, with penalty upon any ship or vessel trading to, from, or in, any of His Majesty's plantations in America, after the said 25th day of March, and not having made proof of her built and property, as is here directed, that she shall be liable, and she is hereby made liable to such prosecution and forfeiture as any foreign ship, (except prizes condemned in the High Court of Admiralty,) would for trading with these plantations by this law be liable to.

governor, and a duplicate to be transmitted.

Penalty on ships trading to America without proof of her built.

XIX. Provided always, that all such ships as have been or shall be taken at sea by letters of mart or reprisal, and condemnation thereof made in the High Court of Admiralty of England, as lawful prize, shall be specially registered, mentioning the capture and condemnation instead of the time and place of building, with proof also upon oath, that the entire property is English, before any such prize shall be allowed the privilege of an English-built ship, according to the meaning of this act.

Prize ships to be registered, and oath made that the property is English.

XX. Provided also, that nothing in this act shall be construed to require the registering any fisher-boats, hoys, lighters, barges, or any open boats or other vessels, (though of English or plantation built,) whose navigation is confined to the rivers or coasts of the same plantation or place where they trade respectively, but only of such of them as cross the seas to or from any of the lands, islands, places, or territories, in this act before recited, or from one plantation to another.

Fisher-boats, hoys, &c. not to be registered.

XXI. And be it further enacted by the authority aforesaid, that no ship's name registered shall be afterwards changed without registering such ship *de novo*, which is hereby required to be done upon any transfer of property to another port, and delivering up the former certificate to be cancelled under the same penalties, and in the like method, as is herein before directed; and that in case there be any alteration of property in the same port, by the sale of one or more shares in any ship after registering thereof, such sale shall always be acknowledged by indorsement on the certificate of the register before two witnesses, in order to prove that the entire property in such ship remains to some of the subjects of England, if any dispute arises concerning the same.

Ship's name not to be altered without registering *de novo*; and if sold, such sale to be indorsed on the register's certificate.

26 Geo. III. c. 60.

An Act for the further Increase and Encouragement of Shipping and Navigation.

Preamble.

WHEREAS the wealth and strength of this kingdom, and the prosperity and safety of every part of the British empire, greatly depend on the encouragement given to shipping and navigation: and whereas it is proper that the advantages hitherto given by the legislature to ships owned and navigated by His Majesty's subjects should from henceforth be confined to ships wholly built and fitted out in His Majesty's dominions: be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, That from and after the 1st day of August, 1786, no ship or vessel foreign-built, (except such ships or vessels as have been or shall hereafter be taken by any of His Majesty's ships or vessels of war, or by any private or other ship or vessel, and condemned as lawful prize in any Court of Admiralty,) nor any ship or vessel built or rebuilt upon any foreign made keel or bottom, in the manner heretofore practised and allowed, although owned by British subjects, and navigated according to law, shall be any longer entitled to any of the privileges or advantages of a British-built ship, or of a ship owned by British subjects; and that all the said privileges and advantages shall hereafter be confined to such ships only as are wholly of the built of Great Britain or Ireland, Guernsey, Jersey, and the Isle of Man, or of some of the colonies, plantations, islands, or territories in Asia, Africa, or America, which now belong, or at the time of building such ships or vessels did belong, or which may hereafter belong to, or be in the possession of His Majesty, his heirs or successors: Provided always, that nothing hereinbefore contained shall extend, or be construed to extend, to prohibit such foreign-built ships or vessels only as, before the 1st day of May, 1786, did truly and without fraud wholly belong to any of the people of Great Britain or Ireland, Guernsey, Jersey, and the Isle of Man, or of any of the aforesaid colonies, plantations, islands, or territories, as the proprietors and right owners thereof, and which shall be navigated according to law, and shall also be registered in manner hereinafter directed, from continuing to enjoy the privileges and advantages they have hitherto enjoyed, or from importing or exporting such goods or commodities as may now be legally imported or exported by such ships or vessels, into and from such ports and places as is now by law allowed, and under such rules, regulations, and restrictions as have heretofore been made touching such foreign-built ships or vessels, and subject and liable to all such duties as have been imposed on any goods or commodities imported or exported as aforesaid in such foreign-built ships or vessels, by any act

From Aug. 1, 1786, no ship built out of His Majesty's dominions, except prizes, shall be entitled to the privileges of a British ship; but foreign ships, built before May 1, 1786, not hereby to be deprived of the privileges they now enjoy, &c.

or acts of parliament: and provided also, that nothing herein contained shall extend, or be construed to extend, to deprive any ship or vessel, which before the passing of this act hath been built or rebuilt upon any foreign made keel or bottom, and which, before the said 1st day of May, 1786, was duly registered as a British ship, from continuing to enjoy any privilege or advantage to which such ship or vessel is now by any law or usage entitled; nor to prevent any such ship or vessel which shall have been begun to be repaired or rebuilt before the said 1st day of May, 1786, from being registered according to, and in pursuance of this act, by an order under the hands of the commissioners of His Majesty's customs in England, or any four or more of them, or of the commissioners of His Majesty's customs in Scotland, or any three or more of them; which order the said commissioners respectively are hereby authorised and empowered to grant, if it shall be made appear to the satisfaction of the said commissioners respectively upon oath, that such ship or vessel was stranded by the act of Providence, and not with a fraudulent intent, and was, at the time of being so stranded, the sole property of some foreigner or foreigners; or that such ship or vessel was a droit of Admiralty, and it be in like manner fully and clearly ascertained, to the satisfaction of such commissioners respectively, that the said ship or vessel, from the damage received by being so stranded, was rendered unfit to proceed to sea without undergoing a thorough repair in this kingdom, and that she was necessarily sold for the benefit of the foreign owner or owners, or, being a droit of Admiralty, was sold by virtue and under the authority of an order or commission from the Court of Admiralty, and that she was fairly and openly purchased by a British subject or subjects, and, being the sole and entire property of such British subject or subjects, that she hath been so much repaired, that two-thirds of her at the least are of British-built.

No ship rebuilt, or where repairs exceed 15*s.* *per* ton, in a foreign port, to be deemed British-built.

Exception in favour of extraordinary damages sustained on voyages.

II. And be it further enacted by the authority aforesaid, that, from and after the 1st day of August, 1786, no ship or vessel shall be deemed or taken to be British-built, or enjoy the privileges thereunto belonging, which shall from thenceforth be rebuilt or repaired in any foreign port or place, if such repairs shall exceed the sum of fifteen shillings for every ton of the said ship or vessel according to the admeasurement thereof, unless such repairs shall be necessary by reason of extraordinary damage sustained by such ship or vessel during the absence of such ship or vessel from His Majesty's dominions, to enable her to perform the voyage in which she shall be then engaged, and to return in safety to some port or place of the said dominions; and that before such ship or vessel shall be repaired, so as to exceed the sum aforesaid, the master, or other person having or taking the charge or command of such ship or vessel, shall report the state and condition thereof upon oath, or (being a Quaker,) upon affirmation, to the British consul, or other chief British officer, if there shall be such consul or officer at the port where it shall be necessary to repair such ship or vessel, and shall cause such ship or vessel to be surveyed by two fit and proper persons to be approved of by such consul or chief British officer; and shall deliver to such consul or chief British officer, in

writing, the particulars of the damage sustained by such ship or vessel, and shall verify upon oath, or (being a Quaker,) upon affirmation, (to be administered by such consul or chief British officer,) the particulars and amount of the repairs of such ship or vessel; and that the same were become necessary in consequence of damage sustained during the voyage to that port, to enable such ship or vessel to prosecute the voyage then intended, and to return to some port or place of His Majesty's dominions, which the said consul, or chief British officer, is hereby required to certify under his hand and seal; and if there shall not be any British consul, or chief British officer, resident at or near the port or place where such repairs may be necessary, then that such survey shall be made by two fit and proper persons, to be approved of by two known British merchants residing at or near such port or place; and that such master, or other person having or taking the charge or command of such ship or vessel, shall produce to such merchants as aforesaid, vouchers of the particulars and amount of the repairs of such ship or vessel, whose certificate of the same shall be of the like force and effect as that of the British consul, or chief British officer resident in any foreign port or place; and in case any ship or vessel shall, after the said 1st day of August, 1786, be repaired in any foreign port or place, the master, or other person having or taking the charge or command thereof, shall make proof on oath, or (if a Quaker,) by affirmation, before the collector and comptroller, or other principal officer of the customs in the port of His Majesty's dominions where the said ship or vessel may first arrive (if required by them so to do; which oath or affirmation the said collector and comptroller, or other principal officer, or either of them, is and are hereby authorised and empowered to administer,) describing the nature and amount of the charge or expence of such repairs; and if such charge or expence shall appear to exceed the beforementioned sum of fifteen shillings for every ton of the admeasurement of such ship or vessel, and the said master, or other person having or taking the charge or command of such ship or vessel, shall neglect or refuse to deliver to such collector and comptroller, or principal officer of the customs, or to one of them, the certificate so required to be produced in such cases as aforesaid, the said ship or vessel shall be deemed and taken to be a foreign-built ship or vessel, to all intents and purposes whatever.

Expences of repairs to be certified, on arrival, to an officer of the customs.

Provisions of act 7 & 8 Gul. III. c. 22. to be extended to vessels of fifteen tons, and upwards, and certificates of registry obtained.

III. And whereas it is highly expedient that the provisions made for the registry of ships and vessels by an act, made and passed in the 7th and 8th years of the reign of his late Majesty King William the Third, (intituled, An Act for preventing Frauds, and regulating Abuses in the Plantation Trade,) should be altered and amended, and that the same should be extended and applied to ships and vessels other than those which are therein particularly described; be it therefore enacted, that all and every ship or vessel having a deck, or being of the burthen of fifteen tons, or upwards, belonging to any of His Majesty's subjects in Great Britain, or Guernsey, Jersey, and the Isle of Man, or of any of the aforesaid colonies, plantations, islands, or territories, shall, from and after the respective times hereinafter expressed, be registered in manner hereinafter mentioned; and that the person or persons claiming

property therein shall cause the same to be registered, and shall obtain a certificate of such registry from the collector and comptroller of His Majesty's customs in Great Britain, or the Isle of Man, or from the governor, lieutenant-governor, or commander-in-chief, and principal officer or officers of His Majesty's revenue of customs, residing in the islands of Guernsey or Jersey, or in any of the said colonies, plantations, islands, or territories, respectively, in manner hereinafter directed; and that the form of such certificate shall be as follows; *videlicet:*

Certificate of British registry.

In pursuance of an Act, passed in the Twenty-sixth Year of the Reign of King George the Third, intituled, An Act [*here insert the title of the act, the names, occupation, and residence, of the subscribing owners,*] having taken and subscribed the oath required by this act, and having sworn that he, [*or*, they,] together with [*names, occupation, and residence of non-subscribing owners,*] is [*or* are] sole owner [*or*, owners] of the ship or vessel called the [*ship's name*] of [*place to which the vessel belongs,*] whereof [*master's name*] is at present master, and that the said ship or vessel was [*when and where built, or captured, and date of condemnation;*] and [*name and employment of the surveying officer*] having certified to us that the said ship or vessel is [*whether British, foreign, or British plantation built,*] has [*number of decks*] decks, and [*number of masts*] masts, that her length, from the fore part of the main stem to the after part of the stern post aloft, is [*number of feet and inches,*] her breadth at the broadest part, whether above or below the main wales, [*number of feet and inches,*] her height between decks [*number of feet and inches, if more than one deck, and if not, then* the depth of the hold [*number of feet and inches,*] and admeasures [*burthen*] tons, that she is a [*kind of vessel, and how built,*] has [*whether any or no gallery*] gallery, and [*kind of head, if any*] head; and the said subscribing owners having consented and agreed to the above description and admeasurement, and having caused sufficient security to be given, as is required by the said act, the said [*kind and name of the vessel*] has been duly registered at the port of [*name of the port*].

Given under our hands and seals of office, at the custom-house in the said port of [*name of the port,*] this [*date*] day of [*name of the month,*] in the year [*words at length.*]

No registry made, &c. but at the port to which a vessel belongs, except for prizes condemned at Guernsey, &c. unless authorised by the commissioners of the customs.

IV. And be it further enacted by the authority aforesaid, that no such registry shall hereafter be made, or certificate thereof granted, by any person or persons hereinbefore authorised to make such registry, and grant such certificate, in any other port or place than the port or place to which such ship or vessel shall properly belong, except so far as relates to such ships or vessels as shall be condemned as prizes in any of the islands of Guernsey, Jersey, or Man, which ships or vessels shall in future be registered in manner hereinafter directed; but that all and every registry and certificate granted in any port or place to which any such ship or vessel does not properly belong, shall be utterly null and void, to all intents

and purposes, unless the officers aforesaid shall be specially authorised and empowered to make such registry, and grant such certificate, in any other port, by an order in writing under the hands of any four or more of the commissioners of His Majesty's customs in England, or of any three or more of the commissioners of His Majesty's customs in Scotland, for the time being, which order the said commissioners are hereby respectively authorised and empowered to issue, in manner aforesaid, if they shall see fit.

The port from and to which a ship usually trades, to be deemed her port.

V. And be it further enacted by the authority aforesaid, that the port to which any ship or vessel shall hereafter be deemed and taken to belong, within the intent and meaning of this act, shall be, and is hereby declared to be, the port from and to which such ship or vessel shall usually trade, or (being a new ship) shall intend so to trade, and at or near which the husband, or acting and managing owner or owners of such ship or vessel usually resides or reside.

No registry to be required for any vessels belonging to the Royal Family.

VI. Provided always, and be it further enacted by the authority aforesaid, that nothing in this act contained shall extend, or be construed to extend, to require to be registered, according to the directions of this act, any ship or vessel of war, or any other vessel, of whatever built the same may be, or under whatever description the same may fall, being the property of His Majesty or the Royal Family, or any of them, or any lighters, barges, boats, or vessels of any built or description whatever, used solely in rivers or inland navigation.

No ship built in the United States of America, &c. during the existence of any prohibitory acts, entitled to be registered.

VII. And it is hereby declared, that no ship or vessel built in any of the colonies of North America, now called The United States of America, during the time that any act or acts of parliament made in Great Britain, prohibiting trade and intercourse with those colonies, was or were in force, nor any ship or vessel which was owned by, or belonged to the subjects of the said United States, or of any of the said States respectively, during the existence of those acts, and not registered before the commencement thereof, is or shall be entitled to be registered under this present act, or to any of the privileges or advantages of a British-built ship or vessel, unless such ship or vessel shall have been taken and condemned as lawful prize, or, having been stranded, shall have been built or rebuilt, and registered in the manner heretofore practised and allowed.

No subject residing out of His Majesty's dominions, to be entitled to be the owner of any ship, authorised to be registered, except a member of a factory, &c.

VIII. And be it enacted by the authority aforesaid, that no subject of His Majesty, his heirs and successors, whose usual residence is in any country not under the dominion of His Majesty, his heirs and successors, shall be deemed or entitled, during the time he shall continue so to reside, to be the owner in whole or in part of any British ship or vessel, required and authorised to be registered by virtue of this act, unless he be a member of some British factory, or agent for, or partner in, any house or copartnership, actually carrying on trade in Great Britain or Ireland.

Oath required by the recited act of Gul. III. repealed.

IX. And be it further enacted by the authority aforesaid, that so much of the said recited act passed in the seventh and eighth years of the reign of his late Majesty King William the Third, as directs the oath therein contained to be taken on registering the ships and vessels therein described, shall be, and the same is hereby repealed.

X. And be it also enacted by the authority aforesaid, that no registry shall henceforth be made, or certificate granted, until the following oath be taken and subscribed before the person or persons hereinbefore authorised to make such registry, and grant such certificate respectively, (which they are hereby respectively empowered to administer) by the owner of such ship or vessel, if such ship or vessel is owned by or belongs to one person only; or, in case there shall be two joint owners, then by both of such joint owners, if both shall be resident within twenty miles of the port or place where such register is required; or by one of such owners, if one or both of them shall be resident at a greater distance from such port or place; or if the number of such owners or proprietors shall exceed two, then by the greater part of the number of such owners or proprietors, if the greater number of them shall be resident within twenty miles of such port or place as aforesaid, not in any case exceeding three of such owners or proprietors, or by one of such owners, if all shall be resident at a greater distance.

No registry to be made, &c. till the following oath be taken.

I. A. B. of [*place of residence and occupation*] do make oath, that the ship or vessel [*name*] of [*port or place*] whereof [*master's name*] is at present master, being [*kind of built, burthen, et cetera, as described in the certificate of the surveying officer*] was [*when and where built, or if prize, capture, and condemnation*] and that I the said *A. B.* [*and the other owners' names and occupations, if any, and where they respectively reside*, videlicet, *town, place or parish, and county, or if member of, and resident in any factory in foreign parts, or in any foreign town or city, being an agent for, or partner in any house, or copartnership actually carrying on trade in* Great Britain, *or* Ireland, *the name of such factory, foreign town or city, and the names of such house or copartnership*] am [*or* are] sole owner [*or owners*] of the said vessel, and that no other person or persons whatever hath or have any right, title, interest, share, or property therein or thereto; and that I the said *A. B.* [*and the said other owners, if any*] am [*or* are] truly and *bonâ fide* a subject [*or* subjects] of Great Britain; and that I the said *A. B.* have not [*nor have any of the other owners, to the best of my knowledge and belief,*] taken the oath of allegiance to any foreign state whatever [*except under the terms of some capitulation, describing the particulars thereof,*] or that since my taking [*or his or their taking*] the oath of allegiance to [*naming the foreign states respectively to which he or any of the said owners shall have taken the same*] and prior to the passing of an act in the 26th year of the reign of King George the Third, (intituled, *An Act for the further Increase and Encouragement of Shipping and Navigation,*) I have [*or he or they hath or have*] become a subject [*or* subjects] of Great Britain, [*either by His Majesty's Letters Patent, as a denizen or denizens, or naturalized by act of parliament, as the case may be, naming the dates of the letters of denization, or the act or acts of parliament for naturalization respectively*] or [*as the case may be*] I have [*or he or they hath or have*] become a denizen [*or* denizens, *or* naturalized subject *or* subjects, *as the case may be*] of Great Britain, by His Majesty's Letters Patent, or by an act of

parliament passed since the 1st day of January, 1786, [*naming the times when such letters of denization have been granted respectively, or the year or years in which such act or acts for naturalization have passed respectively,*] and that no foreigner, directly or indirectly, hath any share or part or interest in the said ship or vessel.

Addition to be made to the oath when the requisite number of members do not attend.

XI. And be it further enacted by the authority aforesaid, that, in case the number of joint owners or proprietors of any ship or vessel shall amount to three or more, and three of such joint owners or proprietors shall not personally attend to take and subscribe the oath hereinbefore directed to be taken and subscribed; then, and in such case, such owner or owners, proprietor or proprietors, as shall personally attend, and take and subscribe the oath aforesaid, shall further make oath, that the part owner or part owners of such ship or vessel then absent is or are not resident within twenty miles of such port or place, and hath or have not, to the best of his or their knowledge or belief, wilfully absented himself or themselves, in order to avoid the taking the oath hereinbefore directed to be taken and subscribed, or is or are prevented by illness from attending to take and subscribe the said oath.

Ships to be examined, &c. before certificates are granted, &c.

XII. And, in order to enable the proper officer or officers of His Majesty's customs to grant a certificate, truly and accurately describing every ship or vessel to be registered in pursuance of this act, and also to enable all other officers of His Majesty's customs, on due examination, to discover whether any such ship or vessel is the same with that for which a certificate is alleged to have been granted; be it enacted by the authority aforesaid, that, previous to the registering or granting of any certificate of registry as aforesaid, some one or more proper person or persons, appointed by the commissioners of His Majesty's customs in England and Scotland, or by the governor, lieutenant-governor, or commander-in-chief for the time being in the islands of Guernsey, Jersey, and Man, or of the colonies, plantations, islands, or territories aforesaid respectively (taking to his or their assistance, if he or they shall judge it necessary, one or more person or persons skilled in the building and admeasurement of ships) shall go on board of every such ship or vessel as is to be registered, and shall strictly and accurately examine and admeasure every such ship or vessel, as to all and every particular contained in the form of the certificate hereinbefore directed, in the presence of the master, or of any other person who shall be appointed for that purpose on the part of the owner or owners, or, in his or their absence, by the said master, and shall deliver a true and just account in writing of all such particulars of the built, description, and admeasurement of every such ship or vessel as are specified in the form of the certificate above recited, to the person or persons who shall be authorised as aforesaid to make such registry and grant such certificate of registry; and the said master, or other person attending on the part of the owner or owners, is hereby required to sign his name also to the certificate of such surveying or examining officer in testimony of the truth thereof, p.ovided such master or other person shall consent and agree to the several particulars set forth and described therein.

XIII. And be it also enacted by the authority aforesaid, that if such person or persons so appointed to examine and admeasure such ships or vessels as aforesaid shall wilfully deliver to any person or persons authorised to make registry and grant certificates of registry as aforesaid, a false description of any of the particulars hereby required to be contained in such certificate; or if any person or persons hereinbefore authorised to make such registry, and grant such certificates of registry, shall knowingly make any false register, or grant any false certificate, in regard to any of the particulars required by this present act, he or they, on being convicted thereof by due course of law, in any of His Majesty's Courts of Record at Westminster, in the Court of Justiciary, or the Court of Exchequer in Scotland, or in any Court of Record in the said colonies, plantations, islands, or territories, or in the Royal Court in Guernsey or Jersey, or in the Superior Court of Justice in the Isle of Man, as the case may be, shall respectively forfeit the sum of one hundred pounds, and be for ever incapable of holding or enjoying any office or employment under His Majesty.

Persons giving false descriptions, or making false registries, &c. of ships, forfeit 100*l.*

XIV. And whereas the officer or officers so appointed to examine and admeasure such ships and vessels as aforesaid may not always be enabled to cause such ship or vessel to be laid on shore, for the purpose of ascertaining her tonnage, according to the rule now by law prescribed for that purpose: and whereas it would in some cases endanger such ship or vessel so to do: be it therefore enacted by the authority aforesaid, that in cases where it may be necessary to ascertain the tonnage of any such ships or vessels when afloat, the following method shall be observed; *videlicet*, drop a plumb line over the stern of the ship, and measure the distance between such line and the after part of the stern post, at the load water mark; then measure from the top of the said plumb line, in a parallel direction with the water, to a perpendicular point immediately over the load water mark, at the fore part of the main stem, subtracting from such measurement the above distance, the remainder will be the ship's extreme length, from which is to be deducted three inches for every foot of the load draught of water, for the rake abaft, and also three-fifths of the ship's breadth, for the rake foreward, the remainder shall be esteemed the just length of the keel to find the tonnage; and the breadth shall be taken from outside to outside of the plank, in the broadest part of the ship, either above or below the main wales, exclusive of all manner of sheathing or doubling that may be wrought upon the side of the ship; then multiplying the length of the keel for tonnage by the breadth so taken, and that product by half the breadth, and dividing by ninety-four, the quotient shall be deemed the true contents of the tonnage: provided always, that nothing hereinbefore contained shall in anywise be construed to alter the manner of admeasuring the tonnage of any ship or vessel which has heretofore been practised for the purpose of ascertaining the light duties, or any other duties or imposts whatever, payable according to the tonnage of any ship or vessel.

Method of ascertaining the tonnage, when vessels are afloat.

XV. And be it further enacted by the authority aforesaid, that, at the time of obtaining the certificate of registry as aforesaid, sufficient security by bond shall be given to His Majesty, his heirs

Bond to be given not to lend certificates, and to

return them in cases herein specified.

and successors, by the master and such of the owners as shall personally attend, as is hereinbefore required, such security to be approved of and taken by the person or persons hereinbefore authorised to make such registry, and grant such certificates of registry, at the port or place in which such certificate shall be granted, in the penalties following; (that is to say,) if such ship or vessel shall be a decked vessel, or be above the burthen of fifteen tons, and not exceeding fifty tons, in the penalty of one hundred pounds; if exceeding the burthen of fifty tons, and not exceeding one hundred tons, in the penalty of three hundred pounds; if exceeding the burthen of one hundred tons, and not exceeding two hundred tons, in the penalty of five hundred pounds; if exceeding the burthen of two hundred tons, and not exceeding three hundred tons, in the penalty of eight hundred pounds; and if exceeding the burthen of three hundred tons, in the penalty of one thousand pounds: and the condition of every such bond shall be, that such certificate shall not be sold, lent, or otherwise disposed of, to any person or persons whatever, and that the same shall be solely made use of for the service of the ship or vessel for which it is granted; and that in case such ship shall be lost, or taken by the enemy, burnt, or broken up, or otherwise prevented from returning to the port to which she belongs, the certificate, if preserved, shall be delivered up, within one month after the arrival of the master in any port or place in His Majesty's dominions, to the collector and comptroller of some port in Great Britain, or of the Isle of Man, or of the British plantations, or to the governor, lieutenant-governor, or commander-in-chief, for the time being, of the islands of Guernsey or Jersey; and that if any foreigner, or any person or persons for his use and benefit, shall purchase or otherwise become entitled to the whole, or any part or share of, or any interest in such ship or vessel, and the same shall be within the limits of any port in Great Britain, Guernsey, Jersey, Man, or the British colonies, plantations, islands, or territories aforesaid; then and in such case the certificate of registry shall, within seven days after such purchase or transfer of property in such ship or vessel be delivered up to the person or persons hereinbefore authorised to make registry, and grant certificates of registry, at such port or place respectively, as aforesaid; and if such ship or vessel shall be in any foreign port when such purchase or transfer of interest or property shall take place, then that the same shall be delivered up to the British consul, or other chief British officer, resident at or nearest to such foreign port; or if such ship or vessel shall be at sea when such purchase or transfer of interest or property shall take place, then that the same shall be delivered up to the British consul, or other chief British officer, at the foreign port or place in or at which the master, or other person having or taking the charge or command of such ship or vessel, shall first arrive after such purchase or transfer of property at sea, immediately after his arrival at such foreign port; but if such master, or other person who had the command thereof at the time of such purchase or transfer of property at sea, shall not arrive at a foreign port, but shall arrive at some port of Great Britain, Guernsey, Jersey, Man, or His Majesty's said colonies, plantations, islands, or territories, then that the same shall

be delivered up in manner aforesaid, within fourteen days after the arrival of such ship or vessel, or of the person who had the command thereof, in any port of Great Britain, Guernsey, Jersey, Man, or any of His Majesty's said colonies, plantations, islands, or territories: and that if any pass, commonly called A Mediterranean Pass, shall have been obtained or procured for any such ship or vessel, then and in such case the same shall be delivered up at the same time, and in like manner, with the certificate of registry aforesaid, to the person or persons hereinbefore authorised to receive such certificate of registry: and such certificates so delivered up shall forthwith be transmitted to the commissioners of His Majesty's customs in England and Scotland respectively: and such Mediterranean passes shall be also transmitted to the commissioners for executing the office of Lord High Admiral of Great Britain, by the person or persons hereinbefore authorised to receive such certificates aud passes, in order that the same may be cancelled.

Mediterranean passes to be delivered up with certificates.

XVI. And whereas the provisions made in and by the said recited act, touching the indorsement on certificates of registry, in case of any alteration of the property in any ship or vessel, in the same port to which the ship or vessel belongs, have been found insufficient; be it therefore enacted by the authority aforesaid, that, in every such case, besides the indorsement required by the said recited act, there shall also be indorsed on the certificate of registry, before two witnesses, the town, place, or parish where all and every person or persons to whom the property in any ship or vessel, or any part thereof, shall be so transferred, shall reside; or if such person or persons usually reside in any country not under the dominion of His Majesty, his heirs and successors, but in some British factory, the name of such factory of which such person or persons is or are member or members; or if such person or persons reside in any foreign town or city, and are not members of some British factory, the name of such foreign town or city where such person or persons usually reside, and also the names of the house or copartnership in Great Britain or Ireland, for or with whom such person or persons is or are agent or partner, or agents or partners; and the person or persons to whom the property of such ship or vessel shall be so transferred, or his or their agent, shall also deliver a copy of such indorsement to the person or persons authorised to make registry, and grant certificates of registry, as aforesaid, who are hereby required to cause an entry thereof to be indorsed on the oath or affidavit upon which the original certificate of registry of such ship or vessel was obtained; and shall also make a memorandum of the same in the book of registers which is hereby directed and required to be kept, and shall forthwith give notice thereof to the commissioners of His Majesty's customs in England or Scotland, under whom they respectively act.

Tenor of indorsements on certificates of registry, &c.

XVII. And be it further enacted by the authority aforesaid, that when and so often as the property in any ship or vessel, belonging to any of His Majesty's subjects, shall be transferred to any other or others of His Majesty's subjects, in whole or in part, the certificate of the registry of such ship or vessel shall be truly and accurately recited, in words at length, in the bill or other in-

Certificate to be recited in all transfers of property.

strument of sale thereof, and that otherwise such bill of sale shall be utterly null and void, to all intents and purposes.

Changes of masters of vessels to be indorsed on certificates of registry, &c.

XVIII. And be it further enacted by the authority aforesaid, that when and so often as the master, or other person having or taking the charge or command of any ship or vessel, registered in manner hereinbefore directed, shall be changed, the master or owner of such ship or vessel shall deliver to the person or persons hereinbefore authorised to make such registry, and grant such certificates of registry, at the port where such change shall take place, the certificate of registry belonging to such ship or vessel; who shall thereupon indorse and subscribe a memorandum of such change, and shall forthwith give notice of the same to the proper officer of the port or place where such ship or vessel was last registered pursuant to this act; who shall likewise make a memorandum of the same in the book of registers which is hereby directed and required to be kept, and shall forthwith give notice thereof to the commissioners of His Majesty's customs in England and Scotland respectively.

No change to be made in ships' names, which, and their ports, must be painted conspicuously on the vessels.

XIX. And whereas many frauds are committed by the frequent change of names given to ships and vessels, and the difficulty of comparing the entry in the book of registers, hereinafter directed to be kept by all such person or persons as are authorised to register ships and vessels, and to grant certificates of the same, with the registers of which they claim the benefit, is thereby greatly increased; be it therefore enacted by the authority aforesaid, that it shall not be lawful for any owner or owners of any ship or vessel to give any name to such ship or vessel, other than that by which she was first registered in pursuance of this act; and that the owner or owners of all and every ship or vessel which shall be so registered, shall, within one month from the time of such registry, paint or cause to be painted, in white or yellow letters, of a length not less than four inches, upon a black ground, on some conspicuous part of the stern, (provided there shall be sufficient space for that purpose, but if not, then in letters as large as such space will admit,) the name by which such ship or vessel shall have been registered pursuant to this act, and the port to which she belongs, in a distinct and legible manner, and shall so keep and preserve the same; and that if such owner or owners, or master, or other person having or taking the charge or command of such ship or vessel, shall wilfully alter, erase, obliterate, or in anywise hide or conceal, or cause or procure, or permit the same to be done, unless in the case of square-rigged vessels in time of war, or shall in any written or printed paper, or other document, describe such ship or vessel by any name, other than that by which she was first registered pursuant to this act, or shall verbally describe, or cause or procure or permit such ship or vessel to be described, by any other name, to any officer or officers of His Majesty's revenue, in the due execution of his or their duty; then, and in every such case, such owner or owners, master, or other person having or taking the charge or command of such ship or vessel, shall forfeit the sum of one hundred pounds.

100*l.* penalty on altering, &c. names.

Persons applying for certificates in Great

XX. And be it further enacted by the authority aforesaid, that all and every person and persons who shall apply for a certificate

of the registry of any ship or vessel in Great Britain, Guernsey, Jersey, or the Isle of Man, which shall be built, or whose building shall be completed after the 1st day of August, 1786, shall, and they are hereby required to produce to the person or persons authorised to grant such certificate, a true and full account, under the hand of the builder of such ship or vessel of the proper denomination, and of the time when, and the place where such ship or vessel was built; and also an exact account of the tonnage of such ship or vessel, together with the name of the first purchaser or purchasers thereof, (which account such builder is hereby directed and required to give under his hand, on the same being demanded by such person or persons so applying for a certificate as aforesaid;) and shall also make oath, before the person or persons hereinbefore authorised to grant such certificate, (which oath he or they are hereby authorised to administer,) that the ship or vessel for which such certificate is required, is the same with that which is so described by the builder as aforesaid.

Britain, &c. to produce a particular account of the ships from the builders, and make oath to their identity.

XXI. And be it further enacted by the authority aforesaid, that all and every person or persons who, from and after the 1st day of January, 1787, shall apply for such certificate as aforesaid, in any of His Majesty's said colonies, plantations, or territories, shall, before such certificate is granted, produce the like account, under the hand of the builder, and take the like oath as is hereinbefore required to be produced and taken by persons applying for the like certificate in Great Britain.

Persons making application in the colonies, after Jan. 1, 1787, to conform to the particulars in the last clause.

XXII. And be it further enacted by the authority aforesaid, that if the certificate of the registry of any ship or vessel which shall be obtained in pursuance of this act, shall happen to be lost or mislaid, a register and certificate *de novo*, in the form hereinbefore directed, shall be granted for such ship or vessel, according to the regulations contained in an act, passed in the fifteenth year of the reign of his late Majesty King George the Second, intituled, An Act for further regulating the Plantation Trade; and for relief of merchants importing prize goods from America; and for preventing collusive captures there; and for obliging the claimers of vessels seized for exportation of wool, or any unlawful importation, to give security for costs; and for allowing East India goods to be taken out of warehouses in order to be cleaned and refreshed.

If certificates be lost, new ones to be granted, according to act 15 Geo. II. cap. 31.

XXIII. Provided always, and be it further enacted by the authority aforesaid, that in every such case such security shall be given as is hereinbefore directed; and that in lieu of the oath directed to be taken by the said recited act, the like oath shall be taken and subscribed, as is hereinbefore directed to be taken and subscribed, by the owner or owners of such ships and vessels, as are required to be registered by virtue of this act.

Security to be given, on receiving fresh certificates, and oath made as hereinbefore directed, instead of the oath 15 Geo. II. cap. 31.

XXIV. And be it further enacted by the authority aforesaid, that if any ship or vessel, after she shall have been registered pursuant to the directions of this act, shall in any manner whatever be altered in form or burthen, by being lengthened or built upon, or shall be altered from a sloop to a brigantine, or from any one denomination of a vessel to another, by the mode or method of rigging or fitting, in such case such ship or vessel shall be registered *de novo*, in manner hereinbefore required, as soon as she returns

Ships, if altered, must be registered anew, or to be deemed foreign

to the port to which she belongs, or to any other port in which she may be legally registered by virtue of this act, on failure whereof such ship or vessel shall, to all intents and purposes, be considered and deemed and taken to be a foreign ship or vessel.

The condemnation of prizes, and the particulars of the vessels, &c. must be produced, to entitle to a certificate of registry.

XXV. And be it further enacted by the authority aforesaid, that the owner or owners of all such ships and vessels as shall be taken by any of His Majesty's ships or vessels of war, or by any private or other ship or vessel, and condemned as lawful prize in any Court of Admiralty, shall, upon registering such ship or vessel before he or they shall obtain such certificate as aforesaid, produce to the proper officer of His Majesty's Customs a certificate of the condemnation of such ship or vessel, under the hand and seal of the Judge of the Court in which such ship or vessel shall have been condemned, (which certificate such Judge is hereby authorised and required to grant;) and also a true and exact account, in writing, of all the particulars contained in the certificate hereinbefore set forth, to be made and subscribed by one or more skilful persons to be appointed by the Court to survey such ship or vessel; and shall also make oath before the said officer, (which he is hereby authorised and required to administer,) that such ship or vessel is the same vessel which is mentioned in the certificate of the Judge aforesaid.

Prizes condemned in Guernsey, &c. to be registered at Southampton, &c.

XXVI. Provided always, and be it further enacted by the authority aforesaid, that no ship or vessel which shall be taken and condemned as prize in any Court of Admiralty as aforesaid, shall be registered in the islands of Guernsey, Jersey, or the Isle of Man, although belonging to His Majesty's subjects residing in those islands, or in some one or other of them; but in order that the duties now by law due and payable to His Majesty on such ships and vessels may be levied and collected, the same shall be registered either at Southampton, Weymouth, Exeter, Plymouth, Falmouth, Liverpool, or Whitehaven by the collector and comptroller at such ports respectively, who are hereby authorised and required, after the receipt of the said duties, to register such ship or vessel, and to grant a certificate thereof, in the form, and under the regulations and restrictions in this act contained.

The sum on oath, for which a prize sold in the colonies, to be subjoined to the certificate.

XXVII. And be it further enacted by the authority aforesaid, that in all the cases where any ship or vessel, so taken and condemned as aforesaid, in any of His Majesty's colonies, plantations, islands, or territories aforesaid, shall be registered, and obtain a certificate of such registry, in manner hereinbefore directed, an exact and particular account shall be subjoined to such certificate, of the sum for which such ship or vessel shall have been sold, verified by the oath of the person or persons who shall apply for such registry and certificate, in order that the aforesaid duties due and payable to His Majesty may be the better levied and collected, upon the arrival of such ship or vessel in any port or place of Great Britain where such duties are by law due and payable.

Certificate to express in what part the ship was built.

XXVIII. And whereas the trade to and from His Majesty's European dominions, and the colonies, plantations, islands, and territories in Asia, Africa, and America, to His Majesty belonging, is now by law confined to such ships only as are of the built of Great Britain and Ireland, the islands of Guernsey, Jersey, d

Man, and of the said colonies, plantations, islands, and territories: And whereas ships wholly owned by British subjects, and navigated according to law, can be legally used and employed only in the European trade of this kingdom; and the same are, by virtue of this act, allowed to be continued in the said trade until the same shall be worn out; and it is therefore necessary to distinguish such ships and vessels respectively in the certificates to be granted pursuant to this act; be it therefore enacted by the authority aforesaid, that the certificates which shall hereafter be granted in pursuance of this act shall distinguish whether such ships or vessels be of the built of Great Britain or Ireland, Guernsey, Jersey, or the Isle of Man, or the colonies, plantations, islands, or territories aforesaid, or of any foreign country; and shall, if British built, be intituled, Certificate of British Plantation Registry; and if such ships be foreign built, shall be intituled, Certificate of Foreign Ships' Registry for the European Trade, British Property, as the case may be.

XXIX. And whereas many foreign built ships and vessels belonging to, or pretending to belong to, His Majesty's subjects, have, by fraudulent contrivances, and under false pretences, obtained registers, by virtue of which such ships and vessels are at present used and employed, contrary to the laws now in force, in the trade to and from his Majesty's colonies, plantations, islands, or territories in Asia, Africa, and America; and it is therefore expedient and necessary, for detecting the frauds at present committed, and for preventing the same in future, that all registers heretofore granted should be called in, and delivered up to the proper officer to be cancelled, and that new registers, of the form hereinbefore described, should be granted in lieu thereof, in the manner hereinbefore directed, to all such ships or vessels as shall appear to be legally entitled to the same: And whereas it is expedient to specify and direct at what time, and in what manner, all other ships and vessels, which are not now by law required to be registered, should hereafter be registered, according to the intent and meaning of this act, and should receive certificates according to the form and in the manner hereinbefore directed: Be it therefore enacted by the authority aforesaid, that the commissioners of His Majesty's customs in England and Scotland, respectively, be authorised and required, and they are hereby authorised and required, to give public notice, by all such ways and means as they shall judge most proper and effectual, that within a certain reasonable time or times as may be best adapted to the distance of the ports to which the ships and vessels, owned by His Majesty's subjects, shall respectively belong, to be by them specified and published, certificates of registry, according to the form hereinbefore described, will be ready to be granted, in manner hereinbefore directed, to all such ships and vessels as shall be legally entitled thereunto; and that the owner or owners of every such ship or vessel, not heretofore required to be registered, shall, on the first arrival of every such ship or vessel at the port or place to which she belongs, after the expiration of the notice hereinbefore directed, cause such ship or vessel to be registered, and shall obtain a certificate thereof in manner hereinbefore directed; and that the owner or owners of any ship or vessel, which shall have

Ships already registered to exchange their certificates for new ones, and others now required to be registered, to apply for certificates, &c.

been heretofore registered, shall in like manner, upon the first arrival of such ship or vessel at the port or place to which she belongs, after the expiration of the notice hereinbefore directed, cause such ship or vessel to be again registered, and obtain a certificate thereof, according to the form and in the manner hereinbefore described, and shall then deliver up the register before granted, if the same be not lost or mislaid; and if the same shall have been lost or mislaid, shall make oath before the proper officer of the customs, that such register has been lost or mislaid, and shall give security in like manner as is directed and required by the said act passed in the fifteenth year of the reign of his late Majesty King George the Second, in the case of registers and certificates *de novo*.

Times allowed for obtaining such certificates

XXX. And be it also enacted by the authority aforesaid, that, from and after the expiration of the notice hereinbefore directed, twelve months shall be allowed to all ships and vessels belonging to any of the ports of Great Britain, or the islands of Guernsey, Jersey, or Man, to be registered and obtain certificates according to the form and in the manner hereinbefore described; and that, in like manner, from and after the expiration of the notice hereinbefore directed, eighteen months shall be allowed to all ships and vessels belonging to any of the ports in His Majesty's colonies, plantations, islands, or territories in Africa or America, to be registered, and to obtain certificates according to the form, and in the manner hereinbefore described; and that, in like manner, from and after the expiration of the notice hereinbefore directed, thirty months shall be allowed to all ships and vessels trading or fishing beyond the Cape of Good Hope, or Cape Horn, to be registered, and obtain certificates according to the form, and in the manner hereinbefore described: And that at the end of the said term of twelve months, with respect to such ships and vessels as belong to the ports of Great Britain, and the islands of Guernsey, Jersey, or Man; and in like manner, at the end of the said term of eighteen months, with respect to all ships and vessels that belong to any of the ports of His Majesty's colonies, plantations, islands, or territories, in Africa or America; and in like manner, at the end of the said term of thirty months, with respect to all ships and vessels trading or fishing beyond the Cape of Good Hope, or Cape Horn, no other register or certificate shall be of force or effect, except such as shall be granted in pursuance of this act; and that all other registers and certificates shall from thenceforth be utterly null and void, to all intents and purposes whatsoever.

Certificates may be granted, where, from unavoidable necessity, application could not be made in time limited.

XXXI. Provided nevertheless, and be it further enacted by the authority aforesaid, that in case it shall happen that any such ship or vessel, from any unavoidable necessity, or reasonable cause, shall not return to the port to which she belongs within the time hereinbefore limited, it shall and may be lawful for the commissioners of His Majesty's customs in England and Scotland respectively for the time being; and they are hereby required, upon proof being made to their satisfaction of such unavoidable necessity or reasonable cause, to cause such ship or vessel to be registered upon the terms and conditions, and under the regulations and restrictions directed and required by this act, any thing herein contained to the contrary thereof notwithstanding.

XXXII. And be it further enacted by the authority aforesaid, that no ship or vessel, which by this act is directed to be hereafter registered, or which is directed, instead of the register now required by law, to take out a new register, according to the form, and in the manner hereinbefore described, shall be permitted, after her first arrival at the port to which she belongs, at the expiration of the notice hereinbefore directed, to clear outwards to foreign parts or coastwise, or to proceed to sea in order to fish on the coasts, or for any other purpose whatever, as a British ship or vessel, or shall be in anywise entitled to the privileges of a British ship or vessel, unless the owner or owners thereof shall have obtained a certificate according to the form, and in the manner hereinbefore described; and in case any such ship or vessel shall depart from such port without being registered, and without having obtained a certificate as aforesaid, every such ship or vessel shall be subject to forfeiture; and also all the guns, furniture, ammunition, tackle, and apparel, to such ship or vessel belonging.

Ships leaving port without certificates to be forfeited.

XXXIII. And be it further enacted by the authority aforesaid, that if, after the expiration of the notice aforesaid, any ship or vessel, (being square-rigged,) shall be found in any port within the distance of twenty leagues by water from the port to which she belongs; or if any vessel, not being square-rigged, be found within any port, other than that to which she belongs, without having obtained the certificate of registry hereinbefore directed, it shall and may be lawful to and for the principal officer or officers of such port; and he or they is, and are hereby required to detain such ship or vessel, until the master, or other person having or taking the charge or command thereof, shall, if such ship or vessel be under the burthen of fifty tons, give security by bond in the penalty of fifty pounds, in manner hereinafter directed; and if such ship or vessel shall exceed the burthen of fifty tons, and shall not exceed that of one hundred tons, then until the master, or other person having or taking the charge or command thereof, shall, in like manner, give security by bond in the penalty of one hundred pounds; and if such ship or vessel shall exceed the burthen of one hundred tons, then until the master, or other person having or taking the charge or command thereof, shall, together with one sufficient security, (to be approved by such principal officer or officers,) give bond to His Majesty, his heirs and successors, to be taken by such officer or officers, in the penalty of two hundred pounds, with condition that such master, or other person so having or taking the charge or command of every such ship or vessel, shall forthwith repair with her, as soon as conveniently may be, (or being employed in the fishery on the banks of Newfoundland, and parts adjacent, at the end of the fishing season,) to the port to which she belongs, and there cause her to be registered, and procure a certificate of such registry, in the form and manner hereinbefore directed, and produce and deliver to such officer or officers such certificate of registry, within the time limited in the condition of such bond, which limitation of time such officer or officers is and are hereby authorised to fix, according to the distance which such ship or vessel may be from the port to which she belongs, and the nature of the voyage in which she may then be

If ships be found without the port to which they belong without certificates, bond must be given that they shall be procured.

engaged, and on failure of producing and delivering such certificate as aforesaid, such bond shall be forfeited; but if such certificate shall be produced and delivered to such officer or officers within the time so limited in the bond, such bond shall be void and of none effect, and he or they is and are hereby authorised and required to cancel the same. And in case any square-rigged ship or vessel, after the expiration of the notice aforesaid, shall be found in any port distant more than twenty leagues by water from the port to which she belongs, or that the water at the entrance of the port to which such ship or vessel belongs shall be so shallow as not to admit her entrance into the same, without endangering the safety of such ship or vessel, the master, or other person having the charge or command of such ship or vessel, shall, within forty-eight hours after his arrival at such port as aforesaid, make known his arrival to the collector and comptroller of the customs, or other principal officer of such port, and shall require such collector and comptroller, or other principal officer, to cause his ship or vessel to be surveyed by the proper officer at such port, who shall be appointed pursuant to the directions of this act to survey ships and vessels there, and sho shall accordingly make a perfect and accurate survey thereof, and certify the several particulars thereof in like manner as is hereinbefore directed; and such collector and comptroller, or other principal officer, shall immediately transmit the said certificate of survey to the persons authorised to register ships and vessels, and grant certificates of registry, at the port to which such ship or vessel belongs, who thereupon, and upon all the other requisites of this act being complied with, shall register such ship or vessel, and grant a certificate of the registry thereof pursuant to this act; and it shall and may be lawful to and for the collector and comptroller, or other principal officer or officers of the customs in the port where such ship or vessel shall be so found; and he or they are hereby authorised and required to detain such ship or vessel until a perfect and accurate survey thereof shall be made in manner hereinbefore directed.

If square rigged vessels cannot enter the ports to which they belong, certificates may be obtained upon their being surveyed, &c. at the port where they touch.

Certificates of registry to be produced at every port, on penalty of 100*l*.

XXXIV. And be it further enacted by the authority aforesaid, that, after the expiration of the notice hereinbefore required, the master, or other person having or taking the charge or command of every ship or vessel which shall have been registered, and shall have procured a certificate of the registry, according to the directions of this act, shall, upon demand, produce such certificate of registry to the principal officer or officers of every port in His Majesty's dominions, or to the British consul, or chief British officer in any foreign port in which such ship or vessel shall arrive, for the inspection of such officer or officers, British consul, or chief British officer, in order to satisfy him or them that she has been properly registered, under the penalty of one hundred pounds.

Certificates, &c. to be numbered, and an account of them to be transmitted to the commissioners of customs.

XXXV. And be it further enacted by the authority aforesaid, that the proper officer at every port and place where registers and certificates shall be granted in pursuance of this act, shall progressively number the same as they shall be severally granted, beginning such progressive numeration at the commencement of each and every year; and shall enter an exact copy of every such certificate, with the number thereof, in a book to be kept for that

purpose; and shall also forthwith, or within one month at furthest, transmit to the commissioners of His Majesty's customs in London and Edinburgh, under whom they respectively act, a true and exact copy, together with the number of every certificate which shall be by him so granted; and that if any such officer or officers shall neglect or refuse so to do, he or they so offending shall, for the first offence, forfeit the sum of one hundred pounds, and shall, for the second offence, forfeit the sum of two hundred pounds, and be dismissed from his or their office or offices.

Penalty for neglect.

XXXVI. And be it also further enacted by the authority aforesaid, That the commissioners of His Majesty's customs in Scotland shall in like manner transmit, at the end of every month in each year, to the commissioners of His Majesty's customs in England, true and exact copies of all such certificates as shall be granted by them, or by any officer or officers within the limits of their commission, in pursuance of this act.

Copies of certificates granted in Scotland to be annually transmitted to the custom-house in England.

XXXVII. And be it further enacted by the authority aforesaid, that in lieu of all stamp duties now by law imposed on such bonds as shall be entered into by the owner or owners of any ship or vessel built before the 1st day of May, 1786, or by any person or persons on their behalf, upon such ship or vessel being first registered, and obtaining a certificate, in pursuance of this act, there shall be paid the sum of one shilling, and no more; and that in lieu of all fees and perquisites now payable to any person or persons, on the registry of any ship or vessel, so built before the said 1st day of May, 1786, there shall be paid on the first registry of every such ship or vessel, pursuant to this act, the following sums, and no more; (that is to say,) By all ships or vessels decked, or of the burthen of fifteen tons, and not exceeding fifty tons, the sum of one shilling and sixpence, and no more; and by all ships or vessels exceeding fifty tons, and not exceeding one hundred tons, the sum of two shillings and sixpence, and no more; and by all ships or vessels exceeding one hundred tons, and not exceeding two hundred tons, the sum of three shillings and sixpence, and no more; and by all ships or vessels exceeding two hundred tons, the sum of five shillings, and no more; which several sums shall be payable to such officers respectively, in the same shares and proportions in which the sums now payable are distributed: Provided always, That the stamp-duties, fees, and perquisites now due and payable upon the registry of, or transfer of property in any ship or vessel, shall continue to be paid as heretofore, save and except upon the first registry in pursuance of this act, of any ship or vessel built and registered before the 1st day of May, 1786.

Sums to be paid on first registry of ships built prior to May 1, 1786, in lieu of stamp-duties, &c.

Stamp-duties to continue to be paid on transfers of property.

XXXVIII. And whereas, since the conclusion of the late war, registers have been granted or promised to ships and vessels not thereunto by law entitled, by His Majesty's governors, or by the officers of His Majesty's customs, in consideration of services rendered to the public by the owners of such ships and vessels, at the time of evacuating the countries, or towns, and posts held by His Majesty's forces in the countries now belonging to the United States of America, or in consideration of the removal of families, to whom such ships and vessels belong, into the countries now belonging to His Majesty: And whereas registers have also in some

Privy council may order ships to be registered to whom they have been granted or promised in consideration of their services, though not otherwise entitled thereto, &c.

cases been so granted or promised to other ships and vessels, by the governors of His Majesty's colonies, plantations, islands, and territories, under misconception of the laws relating thereto, and the property of such ships or vessels has *bonâ fide*, and without fraud, been transferred to others of His Majesty's subjects, who, under the protection thereof now use and employ such ships and vessels: And whereas it may be therefore just and reasonable, in particular cases, where no fraud or collusion shall appear to have been practised, that such ships and vessels should be admitted to a registry, and that a certificate should be granted to the owners thereof, pursuant to this act: Be it further enacted by the authority aforesaid, That it shall and may be lawful to and for His Majesty, by and with the advice of his privy council, to order any such ship or vessel, under the circumstances before mentioned, to be registered, and to have a certificate thereof, according to the form and in the manner hereinbefore described and directed, if His Majesty in his wisdom shall think fit; and in case any suit shall have been commenced for the condemnation of such ship or vessel, it shall and may be lawful for His Majesty, by order in council, to direct all proceedings thereupon to be staid, either absolutely, or upon such terms or conditions as His Majesty shall think fit.

Suits commenced in the colonies touching registers granted such ships may be stopped till His Majesty's pleasure be known.

XXXIX. And be it further enacted by the authority aforesaid, That it shall and may be lawful for any governor, lieutenant-governor, or commander in chief of any of His Majesty's colonies, plantations, islands, or territories, and they are hereby respectively authorized and required, in any of the cases aforesaid, if any suit, information, libel, or other prosecution or proceeding of any nature or kind whatever shall have been commenced, or shall hereafter be commenced, in any Court whatever, in any of the said colonies, plantations, islands, or territories respectively, touching the force and effect of any register granted to any ship or vessel, in any of the circumstances aforesaid, upon a representation made to any such governor, lieutenant-governor, or commander-in-chief, to cause all proceedings thereon to be staid, if he shall see just cause so to do, until His Majesty's pleasure be known, and certified to him by His Majesty, by and with the advice of his privy council; and such governor, lieutenant-governor, or commander-in-chief, is hereby required to transmit to one of His Majesty's principal secretaries of state, to be laid before His Majesty in council, an authenticated copy of the proceedings in every such case, together with his reasons for causing the same to be staid, and such documents (properly verified) as he may judge necessary for the information of His Majesty.

Penalty on neglect of duty.

XL. And be it further enacted by the authority aforesaid, That if any person or persons authorised and required by this act, in respect of his or their office or offices, to perform any act or thing directed and required to be done or performed pursuant to any of the provisions of this act, shall wilfully neglect or refuse to do or perform the same, according to the true intent and meaning of this act, every such person or persons so neglecting or refusing shall, on being duly convicted thereof, forfeit the sum of five hundred pounds, and for the second offence shall forfeit, in like manner,

the sum of five hundred pounds, and shall from thenceforth be rendered incapable of serving His Majesty in any office or employment relative to the revenue, or in any civil capacity whatever.

XLI. And be it further enacted by the authority aforesaid, That if any person or persons shall falsely make oath to any of the matters herein-before required to be so verified, such person or persons shall suffer the like pains and penalties as are incurred by persons committing wilful and corrupt perjury; and that if any person or persons shall counterfeit, erase, alter, or falsify any certificate required or directed to be obtained by this act, or shall knowingly or wilfully make use of any certificate so counterfeited, erased, altered, or falsified, such person or persons shall, for every such offence, forfeit the sum of five hundred pounds.

Persons making false oaths guilty of corrupt perjury; and falsifying or using false certificates to forfeit 500*l.*

XLII. And be it further enacted by the authority aforesaid, That all the penalties and forfeitures inflicted and incurred by this act shall and may be sued for, prosecuted, and recovered in such Courts, and be disposed of in such manner, and by such ways, means, and methods, as any penalties or forfeitures inflicted, or which may be incurred, for any offence committed against the laws of customs, may now legally be sued for, prosecuted, recovered, and disposed of; and that the officer or officers concerned in seizures or prosecutions under this act shall be entitled to and receive the same share of the produce arising from such seizures, as in the case of seizure for unlawful importation, and to such share of the produce arising from any pecuniary fine or penalty, for any offence against this act, as any officer or officers is or are now by any law or regulation entitled to, upon prosecutions for pecuniary penalties.

How penalties are to be recovered, and what is the officer's share.

XLIII. And it is hereby declared and enacted by the authority aforesaid, That all and every matter contained in the said herein-before recited acts, or in any act or acts of Parliament heretofore passed, touching the trade, shipping, and navigation of Great Britain, and the colonies, plantations, islands, and territories aforesaid thereunto belonging, which is not hereby expressly altered or repealed, shall remain and continue in full force and effect, to all intents and purposes whatever; and, so far as the same relate to the registry of ships and vessels, shall be deemed and taken to extend and apply in every respecct to all ships and vessels authorized and required by this act to be registered, and to have certificates of registry.

All acts relative to trade to remain in force, except such parts as are hereby repealed.

XLIV. And be it enacted by the authority aforesaid, That the ships and vessels belonging to His Majesty's subjects residing in the kingdom of Ireland, being duly qualified and registered according to the laws now in force, shall continue to enjoy all the privileges and advantages to which such ships and vessels were by law entitled before the passing of this act, until the end of four calendar months from the commencement of the first session of the parliament of Ireland which shall hereafter sit, during the space of four calendar months, without prorogation or dissolution; and that from the end of that time every ship or vessel which shall, by virtue of the authority of any act that may be passed in the said parliament of Ireland, be qualified and registered in any of the ports of the said kingdom of Ireland, under similar regulations and

Ships of Ireland lawfully qualified and registered there, to enjoy the privileges of British-built ships, &c.

restrictions to those hereinbefore contained, shall continue to enjoy, to all intents and purposes whatsoever, all the privileges and advantages of a British-built ship, or foreign-built ship owned by His Majesty's subjects, as the case may be, according to the provisions of this act.

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27 Geo. III. c. 19.

An Act to enforce and render more effectual several Acts passed in the Twelfth Year of the Reign of King Charles the Second, and other Acts made for the Increase and Encouragement of Shipping and Navigation.

Preamble, reciting 26 Geo. III. c. 60.

WHEREAS by an Act passed in the twenty-sixth year of the reign of his present Majesty, intituled An Act for the further Increase and Encouragement of Shipping and Navigation, it is enacted, That the ships and vessels belonging to His Majesty's subjects residing in the kingdom of Ireland, being duly qualified and registered according to the laws now in force, shall continue to enjoy all the privileges and advantages to which such ships and vessels were by law entitled before the passing of this act, until the end of four calendar months from the commencement of the first session of the parliament of Ireland which shall hereafter sit during the space of four calendar months, without prorogation or dissolution; and from the end of that time, every ship or vessel which shall, by virtue of the authority of any act that may be passed in the said parliament of Ireland, be qualified and registered in any of the ports of the said kingdom of Ireland, under similar regulations and restrictions to those therein contained, shall continue to enjoy, to all intents and purposes whatsoever, all the privileges and advantages of a British-built ship, or a foreign-built ship, owned by His Majesty's subjects, as the case may be, according to the provisions of this act: And whereas by an act of the parliament of Ireland, passed in this present session of the said parliament, intituled, An Act for the further Increase and Encouragement of Shipping and Navigation, regulations and restrictions for qualifying and registering ships and vessels in the ports of the said kingdom of Ireland are enacted and provided similar to those contained in the said before mentioned act of the parliament of Great Britain: Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That every ship or vessel which shall be duly registered in any port in the kingdom of Ireland, according to the regulations and restrictions of the before-mentioned act, passed in the parliament of that kingdom, and shall obtain a certificate thereof, shall enjoy, to all intents and purposes whatso-

Vessels registered in Ireland according to an act of the Parliament of that kingdom, of the present session, to enjoy all the

ever, all the privileges and advantages of a British-built ship or foreign-built ship, owned by His Majesty's subjects, as the case may be.

privileges of vessels owned by His Majesty's subjects.

II. And be it further enacted by the authority aforesaid, That every ship or vessel belonging to His Majesty's subjects residing in the said kingdom of Ireland, being duly qualified and registered according to the laws in force at and immediately before the commencement of the said act, so passed in the parliament of that kingdom, shall continue in like manner to enjoy all the privileges and advantages of a British-built ship or foreign-built ship, owned by His Majesty's subjects, as the case may be, during the time or times which are or may be appointed by the commissioners of His Majesty's revenue in the said kingdom, pursuant to the powers thereby given to the said commissioners to appoint the times when the registration required by the said act is to be made; but that at the end or expiration of the said time or times, so to be appointed by the said commissioners, no ship or vessel belonging to the kingdom of Ireland, which ought to be registered in the ports thereof, shall have or enjoy such privileges or advantages, unless such ship or vessel shall have been registered, and shall have obtained a certificate thereof in pursuance of the before-mentioned act, passed in the said parliament of Ireland.

Vessels registered there according to law, previous to the said act, to continue to enjoy the like privileges during the times appointed by the commissioners of revenue in Ireland; but at the expiration of such time they must be registered agreeable to the said act.

III. Provided always, That in case it shall happen that any such ship or vessel, from any unavoidable necessity or reasonable cause, shall not have returned to the port in Ireland to which she belongs, within the time so appointed by the said commissioners, but shall first touch at some port of Great Britain, the islands of Guernsey or Jersey, or the Isle of Man, it shall and may be lawful for the commissioners of His Majesty's customs in England, or any four or more of them, and for the commissioners of His Majesty's customs in Scotland, or any three or more of them, for the time being respectively, to permit such ship or vessel, upon proof being made to their satisfaction of such unavoidable necessity or reasonable cause, to enjoy the privileges of a British-built ship or vessel for that time only, and to clear out and return to the port in Ireland to which such ship or vessel shall belong, and no other, for the purpose of being there registered.

If any such vessel should be prevented from returning to the port to which she belongs in due time, and should touch at a port in Great Britain, &c. the commissioners of the customs may permit her to clear out, and return to her proper port in Ireland.

IV. And whereas by the before-mentioned act, passed in the twenty-sixth year of His Majesty's reign, it is enacted, That no registry of any ship or vessel shall thenceforth be made, until the owner or owners of such ship or vessel shall have taken an oath therein set forth in manner therein directed, containing, among others, the words following; "That I, the said *A. B.* (and the "said other owners, *if any*) am (*or* are) truly and *bonâ fide* a "subject (*or* subjects) of Great Britain: and that I the said *A. B.* "have not (nor have any of the other owners to the best of my "knowledge or belief) taken an oath of allegiance to any fo-"reign state whatever, except under the terms of some capitula-"tion, [*describing the particulars thereof*:"] Be it enacted by the authority aforesaid, That any oath which shall have been, or may be taken, for the sole purpose of acquiring the rights of a citizen or burgher in any foreign city or town in Europe, to be enjoyed during the time that the person or persons taking such oath

Recital of part of the oath required to be taken by the act 26 Geo. III. cap. 60.

No oath taken to acquire a temporary right as a citizen, during residence in a foreign state, to

be deemed an oath of allegiance to such state.

shall reside in such city or town, and for a limited time after such residence shall have expired, shall not be deemed an oath of allegiance to a foreign state, within the true intent and meaning of the said act.

Instead of the oath required by the recited act, the following oath may be taken by the person properly authorised by the East India Company, &c.

V. And be it enacted by the authority aforesaid, That nothing in the said last-mentioned act contained shall prevent the persons thereby authorised from making registry of ships and vessels, and granting certificates thereof to ships and vessels wholly owned by the United Company of Merchants of England trading to the East Indies, or any other body corporate within this kingdom, all other requisites of the said act being complied with, upon the following oath being taken and subscribed by the secretary of the said United Company, or other body corporate, or by any other officer authorised by such company or body corporate, (instead of the oath directed to be taken by the said act) before the person or persons duly authorised to make such registry and grant such certificates respectively, which oath they are hereby respectively empowered to administer:

Form of the oath.

I, *A. B.* Secretary or officer of [*name of company or corporation*] do make oath, that the ship or vessel [*name*] of [*port or place*] whereof [*master's name*] is at present master, being [*kind of built, burthen*, et cetera, *as described in the certificate of the surveying officer*] was [*when and where built, or if prize, capture and condemnation,*] and that the same doth wholly and truly belong to [*name of company or corporation.*]

VI. And whereas by the said act, passed in the twenty-sixth year of his present Majesty's reign, it is enacted, that, at the time of obtaining the certificate of registry therein directed, sufficient security by bond shall be given to His Majesty, his heirs and successors, by the master, and such of the owners as shall personally attend, as is therein required, such security to be approved of and taken by the person or persons therein authorised to make such registry and to grant a certificate thereof at the port or place in which such certificate shall be granted, in the penalties, and on the conditions, among others in the said act mentioned, that such certificate shall not be sold, lent, or otherwise disposed of: and whereas doubts have arisen, whether such bond can be legally executed by the master of the vessel at any other port or place than that at which the vessel is, by the said act, required to be registered; be it therefore enacted by the authority aforesaid, that, from and after the 1st day of June, 1787, the commissioners of His Majesty's customs in England for the time being, or any four or more of them, or the commissioners of His Majesty's customs in Scotland for the time being, or any three or more of them, or the governor, or lieutenant-governor, or commander-in-chief of the islands of Guernsey or Jersey, or of the Isle of Man, or of any of the colonies, plantations, islands, or territories, which now belong, or may hereafter belong or be in the possession of His Majesty, his heirs and successors, in Asia, Africa, or America, shall, and they are hereby authorised to permit, in any case where it shall appear to them to be expedient, such bond to be taken

From June 1, 1787, the commissioners of the customs, &c. may permit the bond required on obtaining a certificate of the registry of a vessel, to be executed wherever they think proper.

before any person or persons whatever, and in such manner, and at such port or place, as they shall respectively judge fitting and necessary; and every such person or persons shall and are hereby authorised to take such bond, and such bond when so taken shall be valid and of the like force and effect, to all intents and purposes whatever, as if the same had been taken by the person or persons authorised by the said act to make registry and grant a certificate thereof.

Whenever the master of a vessel is changed, fresh security to be given, &c.

VII. And whereas no provision is made in the said act, passed in the said twenty-sixth year of his present Majesty's reign, requiring fresh security by bond to be given whenever the master of a ship or vessel, registered in pursuance thereof, shall be changed; be it therefore enacted by the authority aforesaid, that when and so often as the master, or other person having or taking the charge or command of any ship or vessel, registered in manner therein directed, shall be changed, the person who shall become master, or take the charge or command of such ship or vessel, shall give security by bond, to be taken in the manner and under the penalties and conditions required by the said act and this present act; and upon such fresh security being from time to time given, and the same being made to appear by indorsement on the original bond by the officers in whose custody it shall be, such original bond, so far as it relates to the former master, shall from thenceforth be null and void, (except with respect to any breach or breaches of the conditions of such bond which may have been committed before such indorsement.)

Vessels, not exceeding thirty tons' burthen, and not having a fixed deck, may be employed in the fishery at Newfoundland, &c. without being registered.

VIII. And whereas, for want of a sufficient number of proper officers in the island of Newfoundland, and its dependencies, and in some parts of the provinces of Quebec, Nova Scotia, and New Brunswick, difficulties may occur in carrying the provisions of the beforementioned act, passed in the twenty-sixth year of His Majesty's reign, into execution, so far as may relate to small vessels concerned in carrying on the fishery thereof, and in trading coastwise: be it therefore further enacted by the authority aforesaid, that no vessel whatever, not exceeding the burthen of thirty tons, and not having a whole or fixed deck, and being employed solely in the fishery on the banks or shores of Newfoundland, and of the parts adjacent, or on the banks or shores of the provinces of Quebec, Nova Scotia, or New Brunswick, adjacent to the Gulf of St. Lawrence, and to the north of Cape Canso, or of the islands within the same, or in trading coastwise within the said limits, shall be subject or liable to be registered by virtue or in pursuance of the said act, passed in the said twenty-sixth year of his present Majesty's reign, or shall be liable to any hindrance, molestation, obstruction, or detention whatever, for or on account of not being so registered; any thing in the said act to the contrary thereof in any wise notwithstanding.

Vessels built at Newfoundland, &c. for European owners, may be registered there, upon the ship's

IX. And whereas many ships or vessels have been, and may hereafter be built in the said island of Newfoundland, and in those parts of the provinces of Quebec, Nova Scotia, and New Brunswick, adjacent to the Gulf of St. Lawrence, and to the north of Cape Canso, or in the islands within the said limits, on account of owners residing in His Majesty's European dominions, which ships

agents taking the requisite oath;

or vessels, by reason of the absence of all the owners, cannot be registered in those places, in pursuance and under the provisions of the said act, so passed in the said twenty-sixth year of his present Majesty's reign; be it therefore further enacted by the authority aforesaid, that such ships or vessels shall and may be registered in the said island of Newfoundland and its dependencies, or in the parts of the said provinces of Quebec, Nova Scotia, or New Brunswick, adjacent to the Gulf of St. Lawrence, and to the north of Cape Canso, or in the islands within the said limits, (before the persons authorised respectively at those places to make registry, and to grant certificates thereof, in pursuance of the said act,) upon the husbands or principal agents of the said ships or vessels taking the oath required by the said act, instead of the same being taken by the owners thereof; and the certificates so granted shall be of the like force and effect, to all intents and purposes whatever, as if they had been granted upon the oath of the owners respectively, until such time as such ships or vessels respectively shall arrive at some port in His Majesty's European dominions, where they may be respectively registered upon the oath of the respective owner or owners thereof, but no longer, any thing in the said act contained to the contrary notwithstanding: and whenever such ships or vessels shall first arrive in any such port in His Majesty's European dominions, the certificates of registry, granted in pursuance of this act, shall be utterly null and void, and shall be delivered up to be cancelled; and such ships or vessels shall and are hereby required to be respectively registered *de novo*, upon the oath of the respective owners being taken, and the other requisitions of the said act being complied with.

but such ships, on their arrival in Europe, must be registered agreeable to 26 Geo. III. c. 60.

12 Car. II. c. 18. recited,

X. And whereas, by an act made and passed in the twelfth year of the reign of King Charles the Second, intituled An Act for Encouraging and Increasing of Shipping and Navigation, certain goods and commodities, therein enumerated and described, are required to be imported into this kingdom, either in ships which belong to or are of the built of His Majesty's dominions, or of the built of the country or place of which the said goods or commodities are the growth, production, or manufacture respectively, or of such port where the said goods or commodities can only be, or most usually are first shipped for transportation, be it therefore enacted by the authority aforesaid, that, from and after the 1st day of July, 1787, any of the said goods or commodities so enumerated or described in the said act, being the growth, production, or manufacture of Europe, may be imported into Great Britain under the conditions, rules, regulations, and restrictions contained in the said act; and also in an act, made and passed in the thirteenth and fourteenth years of the reign of King Charles the Second, intituled An Act for preventing Frauds, and regulating Abuses in His Majesty's Customs; and in another act, made and passed in the sixth year of the reign of his late Majesty King George the First, intituled An Act to repeal so much of the act intituled An Act for preventing Frauds, and regulating Abuses in His Majesty's Customs, passed in the thirteenth and fourteenth years of King Charles the Second, as relates to the prohibiting the importation of deal boards and fir timber from Germany; either

and from July 1, 1787, the goods therein enumerated of the growth, &c. of Europe, may be imported into Great Britain under the conditions of that act, and 13 & 14 Car. II. c. 11. and 6 Geo. I. c. 15. in ships which, before May 1, 1786, belonged to His Majesty's dominions, &c.

in ships or vessels which, before the 1st day of May, 1786, did truly and without fraud wholly belong to His Majesty's dominions, or which are of the built of His Majesty's dominions, and registered respectively according to law, or in ships or vessels the built of any countries or places in Europe belonging to or under the dominion of the sovereign or state in Europe of which the said goods or commodities, so enumerated or described as aforesaid, are the growth, production, or manufacture respectively, or of such ports where the said goods or commodities can only be, or are most usually first shipped for transportation, such ships or vessels being navigated with a master, and three-fourths of the mariners, at the least, belonging to such countries or places, or ports respectively, and in none other ships or vessels whatever; any law, custom, or usage to the contrary notwithstanding.

Goods of Morocco imported into Gibraltar, may be imported from thence, in ships built in His Majesty's dominions, or ships belonging thereto, prior to May 1, 1786, on payment of the same duties as if imported from Africa;

XI. And be it further enacted by the authority aforesaid, that it shall and may be lawful for any person or persons whatever to import or bring into Great Britain from Gibraltar, in any ship or vessel which, before the 1st day of May, 1786, did truly without fraud wholly belong to His Majesty's dominions, or are of the built of His Majesty's dominions, navigated and registered according to law, any goods, wares, or merchandize, being the growth or production of the dominions of the emperor of Morocco, and which shall have been imported into Gibraltar directly from any part of the said dominions not lying or being to the southward of the port of Mogadore, in ships or vessels belonging to or of the built of His Majesty's dominions, as before described, navigated and registered according to law, or in ships or vessels belonging to the subjects of the said emperor of Morocco, upon payment of the same duties, and none other, as such goods, wares, or merchandise are or shall be liable to upon being imported into Great Britain directly from Africa.

but such goods must be accompanied with a certificate, that they were imported into Gibraltar in such vessels as are required by this act.

XII. Provided always, and be it enacted, that in every such case, such goods so imported shall be accompanied with a certificate under the hand of the governor, or lieutenant-governor, or commander-in-chief of Gibraltar, (or of any person authorised by them, or either of them, to grant such certificate,) setting forth that such goods were brought into Gibraltar in such ship or vessel as above described.

All vessels which by 26 Geo. III. c. 60. are declared not to be entitled to the privileges of a British-built ship, &c. to be deemed alien ships.

XIII. And, for obviating all doubts which may arise touching the meaning and construction of the said act, made and passed in the twenty-sixth year of the reign of his present Majesty, intituled An Act for the further Increase and Encouragement of Shipping and Navigation, be it enacted and declared, that all ships and vessels which by the said act are declared not to be entitled to any of the privileges or advantages of a British-built ship, or of a ship owned by British subjects, and all ships and vessels not registered according to the directions and regulations of the said act, shall, although such ships and vessels may be owned by His Majesty's subjects, be held and deemed to all intents and purposes, as alien ships, and shall in all cases be liable to such and the same penalties and forfeitures as alien ships, in the like cases, are or shall by law be liable to.

34 GEORGE III. c. 68.

An Act for the further Encouragement of British Mariners; and for other Purposes therein mentioned.—June 11, 1794.

Preamble 12 Car. II. c. 18.

WHEREAS, by an act passed in the twelfth year of the reign of his late Majesty king Charles the second, intituled An Act for the Encouraging and Increasing of Shipping and Navigation, and by several subsequent acts, British ships importing goods of the growth, production, or manufacture, of Asia, Africa, or America, are required to be navigated with a master and three-fourths of the mariners British subjects; and the like ships, importing certain goods particularly enumerated and described in the said acts, are required to be in like manner navigated, under the penalty of forfeiture of all such goods as shall be loaden and carried in any such ship or vessel, with the ship or vessel, and all her guns, ammunition, tackle, and apparel. And whereas the safety and strength of this realm greatly depend on the giving all possible encouragement to the training up and employment of British mariners, and it is therefore expedient that all British ships and vessels should be required to be navigated in such manner as will best tend to promote that important object: be it therefore enacted by the king's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, that, from and after the expiration of six months from the conclusion of the present war, to be notified in manner hereinafter mentioned, no goods, wares, or merchandise whatever, shall be imported or brought into any port or place in the kingdom of Great Britain, or in the islands of Guernsey, Jersey, Alderney, Sark, or Man, on board any ship or vessel which is or shall be registered, or which by law is or shall be required to be registered as a British ship or vessel, unless such ship or vessel shall be navigated by a master and three-fourths, at least, of the mariners British subjects.

After six months from the conclusion of the present war, no goods, &c. to be imported into Great Britain, &c.

nor any goods exported from thence in British vessels, unless the master, and three-fourths of the crew, are British subjects;

II. And be it further enacted by the authority aforesaid, that, from and after the expiration of six months from the conclusion of the present war, to be notified in manner hereinafter mentioned, no goods, wares, or merchandise whatever, shall be exported, or shipped for the purpose of exportation, from any port or place in the kingdom of Great Britain, or the islands of Guernsey, Jersey, Alderney, Sark, or Man, on board any such ship or vessel as aforesaid, unless such ship or vessel shall be navigated by a master and three-fourths, at least, of the mariners British subjects.

nor any such vessels registered in Great Britain, &c. to be otherwise navigated but as herein provided.

III. And be it further enacted that, from and after the expiration of six months from the conclusion of the present war, to be notified in manner hereinafter-mentioned, no ship or vessel, which is or shall be registered, or which by law is or shall be required to be registered as a British ship or vessel in any of the ports of

Great Britain, Guernsey, Jersey, or the Isle of Man, or of any of the colonies, plantations, islands, or territories, belonging, or which may hereafter belong, to His Majesty, his heirs and successors, shall be navigated but by a master and three-fourths, at least, of the mariners British subjects, except as is hereinafter provided.

IV. And whereas by the laws now in force ships or vessels employed in carrying any goods or things whatever from one port or creek of Great Britain, or of the islands of Guernsey, Jersey, Alderney, Sark, or Man, to another port or creek of the same, or of any of them, are required to be navigated with a master and three-fourths of the mariners, at least, British subjects, under the penalty of forfeiture of all such goods as shall be loaden and carried in any such ship or vessel, with the ship or vessel, and all her guns, ammunition, tackle, and apparel: And whereas it is expedient that all ships or vessels so employed, or sailing in ballast from one of the said ports or creeks to another should be manned with, and navigated wholly and solely by, Brisish subjects; be it therefore, further enacted by the authority aforesaid, that, from and after six months from the conclusion of the present war, to be notified in manner hereinafter mentioned, no goods, wares, or merchandizes whatever, shall be carried from any one port, member, or creek, or place, of Great Britain, or of the islands of Guernsey, Jersey, Alderney, Sark, or Man, to any other port, member, creek, or place, of the same, or of any of them, in any such ship or vessel; nor shall any such ship or vessel be permitted to sail in ballast from one of the said ports or creeks to another, nor shall any British ship or vessel be permitted to sail from the ports or coasts of this kingdom, or of the islands of Guernsey, Jersey, Alderney, Sark, or Man, to be employed in fishing on the said coasts, unless such ship or vessel shall respectively be wholly and solely manned with, and navigated by, a master and mariners all British subjects: Provided always, that it shall and may be lawful for four or more of the commissioners of His Majesty's customs in England, and for three or more of the commissioners of His Majesty's customs in Scotland respectively, by licence under their hands, for which no fee shall be taken, to authorize any such ship or vessel employed in fishing on the coast of Great Britain, or of the islands of Guernsey, Jersey, Alderney, Sark, or Man, to have on board any foreign mariner or mariners, for the purpose of instructing the British mariners in such ship or vessel in the art of fishing, or taking or curing fish, such foreign mariner or mariners not exceeding one-fourth of the number of mariners on board such ship or vessel.

No goods to be carried from one place to another in Great Britain, &c. nor any vessel to sail in ballast, nor to fish on the coasts, unless wholly manned with British subjects.

Commissioners of the customs may authorise vessels to have foreign mariners to instruct British ones in fishing.

V. And be it further enacted, that where it is required by this or any other act, that the master, and the whole or any proportion of the mariners, of any ship or vessel shall be British subjects, the true intent and meaning is, that the master, and the whole or such proportions shall be British subjects during the whole voyage, unless in case of sickness, death, desertion, or of the whole or part of the crew being taken prisoners in the voyage, and in such case the master, or other person having the charge or command of such ship or vessel, shall specify the same in his report: Provided also,

Proportions of British mariners to be so the whole voyage unless in certain cases.

Act not to alter any regulations

for which special provision has been made.

that nothing in this act contained shall extend, or be construed to extend, to alter, or in any wise affect, any regulation for navigating or manning of ships employed in any of the fisheries carried on from this kingdom, or any part of His Majesty's dominions, for which any special provision has been made by any act or acts in force before the commencement of this act.

Who shall be deemed British seamen.

VI. And, to prevent all doubts respecting the various terms made use of in the several laws of navigation with respect to who are to be deemed and taken to be qualified to be masters of British ships, or to be British sailors, seamen, or mariners; be it declared and enacted, that no person shall from henceforth be deemed and taken to be qualified to be the master of a British ship, or to be a British sailor, seaman, or mariner, within the intent and meaning of this act, or of any other act now in force, except the natural-born subjects of His Majesty, his heirs and successors, or persons naturalized by or by virtue of any act of parliament, or made denizens by letters of denization, or except persons who have become His Majesty's subjects by virtue of conquest or cession of some newly acquired country, and who shall have taken the oath of allegiance to His Majesty, or the oath of fidelity required by the treaty or capitulation by which such newly acquired country came into His Majesty's possession, except as is hereinafter provided.

VII. And whereas it is expedient that foreigners who have served, or shall serve faithfully on board His Majesty's ships of war in the present or any future war for the time and in the manner hereinafter mentioned, should be declared to be British sailors, seamen, or mariners, within the intent and meaning of the laws of navigation under certain regulations; be it further enacted, that every foreign sailor, seaman, or mariner, who shall have served, or who shall serve, on board any of His Majesty's ships or vessels of war, in time of war, for and during the space of three years, either in one and the same ship or vessel, or in different ships or vessels, and who shall have obtained a certificate or certificates from the captain or commander, captains or commanders, of such ships or vessels on board of which he shall have so served, or in case of the death of such captain or commander, then upon the certificate of the officer then living who shall have been next-in rank to such captain or commander, testifying that he has so served, and testifying his faithful service and good behaviour during the time of such service, and who shall also have taken the oath of allegiance to His Majesty before some justice of the peace or principal magistrate of some city or town in His Majesty's dominions, or before the principal officer of His Majesty's customs in any port of His Majesty's dominions, which oath they are respectively hereby authorised to administer, and who shall obtain a certificate from such justice of the peace, principal magistrate, or chief officer, of his having taken such oath, which certificate they are hereby authorised and required to give upon the payment of no greater fee than that of one shilling, shall, from and after the conclusion of the present war, be entitled to be employed as a master of a British ship or vessel, or as a British sailor, seaman, or mariner, on board any British ship or vessel, within the intent and meaning of this

Foreign seamen serving three years in the navy in time of war may be employed as masters or British seamen on certificate of their service, &c.

act, or any of the laws now in force: Provided always, that no such foreigner shall be entitled to become the master of any British ship or vessel, or to be employed as a British sailor, seaman, or mariner, unless he shall have delivered the beforementioned certificate or certificates of the time he shall have served, and of his faithful service and good behaviour, and the beforementioned certificate of his so having taken the oath of allegiance to the collector or other chief officer of His Majesty's customs in the port of London, or in the ports of Chatham, Portsmouth, or Plymouth, to be filed by such collector or other chief officer of the customs, who are hereby required to deliver to such foreign sailor, seaman, or mariner, an attested copy thereof, upon paying the fee of one shilling, and no more.

No person who has taken an oath of allegiance to any foreign state, except in certain cases, to be qualified to be a master or a British seaman.

VIII. Provided always, and be it enacted, that no person who is or shall become qualified to be the master of a British ship or vessel, or to be a British sailor, seaman, or mariner, by birth, naturalization, denization, conquest, or service, in manner hereinbefore mentioned, and who has taken or shall take any oath of allegiance to any foreign sovereign or state whatsoever, for any purpose whatsoever, except under the terms of some capitulation upon the conquest of any of the dominions of His Majesty, his heirs or successors, by any enemy or enemies, and for the purpose of obtaining the benefit of such capitulation only, shall be deemed and taken to be qualified to be the master of a British ship or vessel, or a British sailor, seaman, or mariner, within the intent and meaning of any of the laws of navigation, unless such person shall have taken such oath of allegiance before he became so qualified; and any person who shall, after having become disqualified by taking such oath of allegiance as aforesaid, take the charge or command of any British ship or vessel, as master or commander thereof, shall, for every such offence, forfeit and pay the sum of one hundred pounds; and every person who shall, after having become so disqualified as aforesaid, engage to serve as a British sailor, seaman, or mariner, on board any such ship or vessel, shall forfeit and pay for every such offence the sum of ten pounds; such forfeitures respectively to be recovered upon conviction before a justice of the peace, if such offence shall be committed in Great Britain, and before any member of the Supreme Court of Justice, or any justice of the peace, if such offence shall be committed in the islands of Guernsey, Jersey, or Man, or in any colony, plantation, island, or territory, to His Majesty belonging in America:

Penalty on disqualified persons acting.

Provided also, that no ship or vessel, on board whereof any person who is so disqualified shall be employed as master or commander, shall be forfeited by reason thereof, if the owner or owners of such ship or vessel shall shew that such disqualification of such master or commander was unknown to such owner or owners respectively, or to his, her, or their agent or agents, and that such disqualification of such sailor, seaman, or mariner, was unknown to such owner or owners respectively, or to his agent or agents, and to the master or commander of such ship or vessel at the time of engaging such person so disqualified to serve on board such ship or vessel:

Vessels not to be forfeited if the disqualification of persons was unknown to the owners.

Provided always, that in the navigation on the seas of America and the West Indies, from any port of America and the West Indies to any port of America and

In America and the West Indies, and to the eastward of the

Cape of Good Hope, negroes, &c. may be employed as heretofore.

the West Indies, any negroes belonging to any person or persons being or having become His Majesty's subjects in manner aforesaid, and with the qualifications aforesaid, and in the seas to the eastward of the Cape of Good Hope, from any port to the eastward of the Cape of Good Hope to any other port to the eastward of the Cape of Good Hope, Lascars, and other natives of any of the countries to the eastward of the Cape of Good Hope, may be employed as British sailors, seamen, or mariners, in manner heretofore practised: Provided nevertheless, that no negro belonging to any person who has become a subject of His Majesty, in manner before described, in any of the islands or colonies late under the dominion of his Most Christian Majesty, shall be entitled to be employed in manner beforementioned as a Britith sailor, seaman, or mariner, unless all the conditions required by an act, passed in the present session of parliament, intituled "An Act for granting to foreign ships put under His Majesty's protection, the privileges of prize ships, under certain regulations and restrictions; for allowing aliens in foreign colonies surrendered to His Majesty, to exercise the occupations of merchants or factors; and for repealing an act, passed in the twelfth year of the reign of His late Majesty, intituled 'An Act for granting a liberty to carry sugars, of the growth, produce, or manufacture, of any of His Majesty's sugar colonies in America, from the said colonies directly to foreign parts, in ships built in Great Britain, and navigated according to law;' and also so much of an act, passed in the fifteenth year of the reign of His late Majesty, as amends the said act, shall have been complied with so long as the said act shall continue in force.

No negro of a colony late under the dominion of the French king to be employed as a seaman unless the conditions of 34 Geo. III. cap. 42, be complied with.

Act not to affect any proclamation under 13 Geo. II. cap. 3.

IX. Provided always, and be it enacted, that nothing in this act contained shall extend to take away or restrain the effect of any such proclamation as His Majesty, his heirs or successors, are empowered to make by virtue of an act, passed in the thirteenth year of his late Majesty's reign, intituled An Act for the better supply of mariners and seamen to serve in His Majesty's ships of war, and on board merchant ships, and other trading ships and privateers.

Goods imported &c. contrary to this act, to be forfeited with the vessels, &c.

X. And be it further enacted by the authority aforesaid, that if any goods, wares, or merchandize whatever, shall be imported or brought, exported or carried coastwise, contrary to the provisions of this act, or any of them, all such goods, wares, and merchandize, and also the ship or vessel in which the same shall be so imported or brought, exported or carried coastwise, with all her guns, furniture, ammunition, tackle, and apparel, shall be forfeited; and also if any ship or vessel shall sail in ballast, or shall sail to be employed in fishing on the coast in manner hereinbefore mentioned, or being required to be manned and navigated with a master and a certain proportion of British mariners in manner hereinbefore directed, shall not be manned and navigated according to the provisions of this act, such ship or vessel, with all her guns, furniture, ammunition, tackle, and apparel, and all the goods, wares, and merchandize, on board the same, shall be forfeited.

By whom goods, &c. forfeited may be

XI. And be it further enacted by the authority aforesaid, that all and every the goods, wares, or merchandize, and all ships or vessels forfeited by this act, may and shall be seized by the com-

mander or commanders of any of His Majesty's ships of war, or any commissioned, warrant, or petty officer, specially appointed by him or them, or by any officer or officers of His Majesty's customs; and that every forfeiture incurred by this act, and whereof the recovery is not specially provided for by this act, may and shall respectively be sued for, prosecuted, and recovered in such courts, and by such and the like ways, means, and methods, and the produce thereof respectively disposed of and applied in such and the like manner, and to such and the like uses and purposes, as any forfeiture incurred by any law respecting the revenue of customs may now be sued for, prosecuted, or recovered, disposed of, and applied either in this kingdom, or in the islands of Jersey, Guernsey, Alderney, Sark, or Man, or in any of His Majesty's other dominions in or out of Europe respectively, as the case may happen to be.

seized, and how forfeitures may be sued for, and how applied.

XII. Provided always, and be it further enacted by the authority aforesaid, that in case any British ship or vessel shall be found at sea, having on board a greater number of foreign mariners than is allowed by this act, or any law now in force, or hereafter to be made; and the master of such ship or vessel shall produce a certificate of the actual necessity of engaging such foreign mariners in some foreign port, by occasion of the sickness, death, or desertion, of the like number of British mariners, or of the same having been taken prisoners during his voyage, and that British mariners could not be engaged at such foreign port to supply their room, and that, for the safe navigation of such ship or vessel, it became necessary to engage and employ such foreign mariners, under the hand of His Majesty's consul at the foreign port where the said foreign mariners were so engaged, or if there is not any such consul there, under the hands of two known British merchants at such foreign port, it shall not be lawful for any of the persons authorised by this act to make seizures of ships or vessels navigated contrary to the directions of this act, to stop or detain any such ship or vessel so found at sea, or to hinder her from proceeding on her voyage, but such persons shall, and are hereby required to indorse the certificate so produced, testifying the production thereof, and when and where met with at sea, and that the number of foreign mariners correspond with the certificate of such British consul, or such known British merchants, for the consideration and investigation of the commissioners of His Majesty's customs in England and Scotland respectively.

On production of certificates of the necessity of engaging foreign mariners, no vessel to be detained, but the persons authorised to make seizures to indorse the certificates for the consideration of the commissioners of customs.

XIII. And be it further enacted, That for the purposes of this act, the conclusion of the present war shall be holden to be from the time that the same shall be notified by proclamation or order of His Majesty in council, to be published in the London Gazette.

Notification in the Gazette to be deemed the conclusion of the war.

XIV. And whereas, by an act passed in the twenty-sixth year of His Majesty's reign, intituled An Act for the further Increase and Encouragement of Shipping and Navigation, it is, amongst other things, enacted, that when and so often as the property in any ship or vessel belonging to any of His Majesty's subjects shall be transferred to any other or others of His Majesty's subjects, in whole or in part, the certificate of the registry of such ship or vessel shall be truly and accurately recited in words at

26 Geo. III. cap. 60. recited, and

length, in the bill or other instrument of sale thereof; and that otherwise such bill of sale shall be utterly null and void, to all intents and purposes: And whereas doubts have arisen whether by the said provision every transfer of property in any ship or vessel is required to be made by some bill, or other instrument in writing, and whether contracts or agreements for the transfer of such property may not be made without any instrument in writing; be it enacted, That no transfer, contract, or agreement for transfer of property in any ship or vessel, made, or intended to be made, after the 1st day of January, 1795, shall be valid or effectual for any purpose whatsoever, either in law or in equity, unless such transfer, or contract or agreement for transfer of property, in such ship or vessel, shall be made by bill of sale or instrument in writing, containing such recital as prescribed by the said recited act.

after Jan. 1, 1795, no transfer of property in any vessel to be valid, unless made agreeably thereto.

On alteration of property in vessels in the port to which they belong, after Jan. 1, 1795, the indorsement to be made in a certain form, &c.

XV. And whereas, by the laws now in force, upon any alteration of property in any ship or vessel in the same port to which such ship or vessel belongs, an indorsement upon the certificate of registry is required to be made; be it enacted, That such indorsement shall, from and after the 1st day of January, 1795, be made in the manner and form hereinafter expressed, and shall be signed by the person or persons transferring the property of the said ship or vessel, by sale, or contract or agreement for sale thereof, or by some person legally authorised for that purpose, by him, her, or them; and a copy of such indorsement shall be delivered to the person or persons authorised to make registry, and grant certificates of registry, otherwise such sale, or contract or agreement for the sale thereof, shall be utterly null and void, to all intents and purposes whatsoever; and such person or persons so authorised to make registry, and grant certificates of registry, are hereby required to cause an entry thereof to be indorsed on the oath or affidavit upon which the original certificate of registry of such ship or vessel was obtained, and shall also make a memorandum of the same in the book of registry, and shall forthwith give notice thereof to the commissioners of His Majesty's customs in England and Scotland, under whom they respectively act:

Form of Indorsement on change of Property.

Form of indorsement.

'Be it remembered, That [I *or* we] [*names, residence, and occupation of the persons selling*] have this day sold and transferred 'all [my *or* our] right, share, or interest, in and to the ship or 'vessel [*name of the ship, or vessel*] mentioned in the within certificate of registry, unto [*names, residence, and occupation of 'the purchasers.*] Witness [my *or* our hand or hands] this [*date 'in words at full length.*]

'Signed in the presence of
[*two witnesses.*']

If vessels be absent from the port to which they belong, when alteration

XVI. Provided always, That if any ship or vessel shall be at sea, or absent from the port to which she belongs, at the time when such alteration in the property thereof shall be made as aforesaid, so that an indorsement or certificate cannot be imme-

diately made, the sale, or contract or agreement for the sale thereof, shall notwithstanding be made by a bill of sale or other instrument in writing as before directed, and a copy of such bill of sale, or other instrument in writing, shall be delivered, and an entry thereof shall be indorsed on the oath or affidavit, and a memorandum thereof shall be made in the book of registers, and notice of the same shall be given to the commissioners of the customs, in the manner hereinbefore directed; and within ten days after such ship or vessel shall return to the port to which she belongs, an indorsement shall be made and signed by the owner or owners, or some person legally authorised for that purpose by him, her, or them, and a copy thereof shall be delivered in manner hereinbefore mentioned, otherwise such bill of sale, or contract or agreement for sale thereof, shall be utterly null and void, to all intents and purposes whatsoever, and entry thereof shall be indorsed, and a memorandum thereof made, in the manner hereinbefore directed.

in the property shall be made, the sale shall still be made as before directed, &c.

XVII. Provided also, and be it enacted, that in all cases where the owner or owners of any ship or vessel shall reside in any country not under the dominion of His Majesty, his heirs and successors, as member or members of some British factory, or agent or agents for, or partner or partners in, any house or copartnership actually carrying on trade in Great Britain or Ireland at the time when he, she, or they shall transfer such property in any ship or vessel, so that an indorsement cannot be made immediately, nor a copy of such bill of sale, or other instrument in writing, be delivered, nor an entry thereof indorsed on the oath or affidavit, nor a memorandum thereof made in the book of registers, nor notice of the same given to the commissioners of the customs, in the manner before mentioned, the same may be done at any time within six months after such transfer shall have been made, and that within ten days after such owner or owners, or some person legally authorised for that purpose by him, her, or them, shall arrive in this kingdom, if such ship or vessel shall then be in any port of this kingdom, and if not, then within ten days after such ship or vessel shall so arrive, an indorsement shall be made by the owner or owners, or some person legally authorized for that purpose by him, her, or them, and a copy thereof shall be delivered in manner hereinbefore mentioned, otherwise such bill of sale, or contract or agreement for sale thereof, shall be utterly null and void, to all intents and purposes whatsoever, and entry thereof shall be indorsed, and a memorandum thereof made, in the manner hereinbefore directed.

Regulations for transfer of property where owners reside in any country not under the dominion of His Majesty.

XVIII. And whereas, by an act passed in the 28th year of the reign of his present Majesty, intituled An Act more effectually to secure the Performance of Quarantine, and for Amending several Laws relating to the Revenue of Customs, certain provisions were, amongst other things, made to prevent the masters of ships or vessels from wilfully and maliciously detaining and refusing to deliver up the certificates of ships' registry, to the prejudice of the owners of such ships or vessels: And whereas the good purposes intended by those provisions have not been effected; and it is therefore expedient to make further provisions for preventing the masters of ships or vessels from withholding certificates of registry, to the pre-

28 Geo. III. c. 34.

Mode of proceedings when Masters withhold certificates of registry.

judice of the owners of such ships or vessels: Be it therefore enacted by the authority aforesaid, That in case the master of any ship or vessel, who shall have received the certificate of the registry thereof, (whether such master shall be a part-owner or not,) shall wilfully detain and refuse to deliver up the same to the proper officers empowered to make registry and grant a certificate thereof, on the owner or owners, or the major part of the owners of such ship or vessel, if such master has not any property therein, or on the other owner or owners, or the major part of the other owners of such ship or vessel, if such master hath any share or property therein, requiring him so to do, it may and shall be lawful to and for the owner or owners, or the major part of the owners of such ship or vessel, the certificate of registry of which shall be detained and refused to be delivered up as aforesaid, to make complaint on oath against the master of the ship or vessel who shall so detain and refuse to deliver up the same, of such detainer and refusal, to any justice of the peace residing near to the place where such detainer and refusal shall be in Great Britain, or to any member of the Supreme Court of Justice, or any justice of the peace in the islands of Jersey, Guernsey, or Man, or in any colony, plantation, island, or territory, to His Majesty belonging, in America or the West Indies, where such detainer and refusal shall be in any of the places last-mentioned, and on such complaint the said justice or other magistrate shall, and is hereby required, by warrant under his hand and seal, to cause such master to be brought before him, to be examined touching such detainer and refusal; and if it shall appear to the said justice or other magistrate, on examination of the master, or otherwise, that the said certificate of registry is not lost or mislaid, but is wilfully detained by the said master, such master shall be thereof convicted, and shall forfeit and pay the sum of one hundred pounds, and on failure of payment thereof he shall be committed to the common gaol, there to remain without bail or mainprize, for such time as the said justice or other magistrate shall in his discretion deem proper, not being less than six months, nor more than twelve months.

Penalty for withholding certificates.

Justices to certify detainer of certificates, on which registry may be made *de novo.*

XIX. And be it further enacted, That the said justice or other magistrate shall, and he is hereby required to certify the aforesaid detainer, refusal, and conviction, to the person or persons who granted such certificate of registry for such ship or vessel, who shall, on the terms and conditions of law being complied with, make registry of such ship or vessel *de novo*, and grant a certificate thereof conformably to law, notifying on the back of such certificate the ground upon which the ship or vessel was so registered *de novo*.

Where property is transferred, no vessel to be registered *de novo* by the register, unless instrument of sale be produced:

XX. And whereas it is expedient that the officers empowered to make registry of ships and vessels, and to grant certificates thereof, in case any such ship or vessel is required to be registered *de novo*, should be authorised to require the production of every bill or other instrument of sale, by which the property in any ship or vessel is transferred; be it therefore enacted by the authority aforesaid, That when and so often as the property in any ship or vessel belonging to any of His Majesty's subjects shall by sale be transferred, in whole or in part, to any other or others of His

Majesty's subjects, and such ship or vessel shall be required to be registered *de novo*, it shall and may be lawful to and for all and every the officer and officers empowered to make registry of ships and vessels, and to grant certificates thereof, to require, and he and they are hereby authorised and directed to require the bill or other instrument of sale thereof to be produced to him or them; and in case such bill or other instrument of sale shall be so required to be produced, and the same shall not be produced to such officer or officers, the said officer or officers shall not make a registry, nor grant a certificate of registry *de novo*, for any such ship or vessel: Provided always, that it shall and may be lawful for the commissioners of His Majesty's customs in England, or any four or more of them, and the commissioners of His Majesty's customs in Scotland, or any three or more of them respectively, if application shall be made to the said commissioners of the customs in England and Scotland respectively, and for the governor, lieutenant-governor, or commander in chief for the time being, of the islands of Guernsey or Jersey, or of any colony, plantation, island, or territory, to His Majesty belonging, if such application shall be made to any of them respectively, upon due consideration of the particular circumstances of the case, to give direction for registering such ship or vessel *de novo*, and granting a certificate of such registry, notwithstanding such bill or other instrument of sale shall not have been produced as aforesaid, and such registry shall be made, and such certificate thereof shall be granted accordingly: Provided always, that all the other regulations required by the laws in force concerning the registry *de novo* of ships and vessels be complied with.

but the commissioners of the customs, &c. may give directions for the registry.

XXI. And whereas, by an act passed in the seventh and eighth years of the reign of his late Majesty King William the Third, intituled An Act for Preventing Frauds, and regulating Abuses in the Plantation Trade, it is, amongst other things, enacted, That in case there be any alteration of property in the same port, by the sale of one or more shares in any ship, after registering thereof, such sale shall always be acknowledged by indorsement on the certificate of the register before two witnesses, in order to prove that the entire property in such ship remains to some of the subjects of England: And whereas it is expedient to authorize and require the proper officers empowered to register ships and vessels, and to grant certificates thereof, to issue registers *de novo* in any case where part of the property of any ship or vessel shall be so transferred, if the owners or proprietors of such ship or vessel, who were owners thereof at the time such ship or vessel was last registered, or whose property therein has not been so transferred, shall be desirous of having a certificate of registry *de novo*, instead of the indorsement on the old register, as now required: Be it therefore enacted by the authority aforesaid, That in case there shall be any alteration of property in the same port, by the sale of one or more shares in any ship or vessel, after registering thereof, and the owner or owners, proprietor or proprietors, of such ship or vessel, who were owners or proprietors thereof at the time such ship or vessel was last registered, or whose property therein has not been so transferred, shall be desirous of having the ship or

7 and 8 Will. III. c. 22.

On alteration of property in vessels in the same port, they may be registered *de novo*.

vessel registered *de novo*, it shall and may be lawful to and for the proper officers empowered to register ships and vessels, and to grant certificates thereof, and such officers are hereby authorised and required to register every such ship or vessel *de novo*, provided all the rules, regulations, and conditions of the before recited act, passed in the twenty-sixth year of the reign of his present Majesty, and of all other laws in force concerning the registry of ships and vessels *de novo*, be complied with.

XXII. And whereas British ships or vessels, the property of which is in whole or in part transferred to persons not being subjects of His Majesty, are not entitled to the privileges of British ships and vessels; and to prevent frauds in the employment of such ships or vessels as British ships or vessels, contrary to the intention of the laws of navigation, they are now by law required, in certain cases, to be registered *de novo;* for which purpose it is necessary that such ship or vessel should proceed, with all due diligence, to the port to which she belongs, or to any other port in which she may be legally registered, by virtue of the said act, passed in the twenty-sixth year of His present Majesty's reign, in order to be registered *de novo;* Be it enacted, that from and after the 1st day of March 1795, as often as any such transfer of property in any ship or vessel shall be made, while such ship or vessel is upon the sea, on a voyage to a foreign port or ports, in case the master of such ship or vessel is privy to such transfer, or, in case he is not so privy, as soon as he shall become acquainted therewith, such ship or vessel shall proceed directly to the port or ports from which the cargo then on board is destined, and shall sail from such port or ports, to which the cargo then on board is destined, to the port of His Majesty's dominions to which she belongs, or to any other such port in which she may be legally registered by virtue of the said act, and such ship or vessel may take on board, in the port or ports for which her original cargo was destined, or in any other port or ports, being in the course of her voyage to the port of His Majesty's dominions in which she may be so registered *de novo*, such cargo, and no other, as shall be destined and may be legally carried to such port of His Majesty's dominions, where she may be so registered *de novo;* and if such transfer of property shall be made while such ship or vessel is in any foreign port, and the master of such ship or vessel is privy to such transfer, or, in case he is not so privy, as soon as he shall become acquainted therewith, such ship or vessel, after having delivered the cargo then on board such ship or vessel at the port or ports for which it is destined, shall sail from such port or ports to the port of His Majesty's dominions to which she belongs, or to any other such port in which she may be legally registered by virtue of the said act, and may take on board, at the port or ports for which her original cargo was so destined, or at any other port, being in the course of her voyage to the port of His Majesty's dominions in which she may be so registered *de novo*, such cargo, and no other, as shall be destined, and may be legally carried to such port of His Majesty's dominions, where she may be so registered *de novo;* and if such transfer of property shall be made while such ship or vessel is on a fishing voyage, and the master of such ship or vessel is privy to such transfer, or, in

From March 1, 1795, on transfer of property to persons not subjects of His Majesty, masters of vessels to act as herein directed;

case he is not so privy, as soon as he shall become acquainted therewith, such ship or vessel, after having finished such fishing voyage, without touching at any foreign port or ports, except for the purpose of repairs or refreshments, or for delivering any part of the cargo she may have on board destined for such foreign port or ports, shall sail to the port of His Majesty's dominions to which she belongs, or to any other such port where she may be legally registered by virtue of the said act, and may take on board, at the foreign port or ports last described, or at any other port or ports, being in the course of her voyage to the port of His Majesty's dominions where she may be so registered *de novo*, such cargo, and no other, as shall be destined and may be legally carried to such port of His Majesty's dominions, and every such ship or vessel as aforesaid shall be registered *de novo* as soon as she returns to the port of His Majesty's dominions to which she belongs, or to any other such port in which she may be legally registered by virtue of the said act; on failure whereof such ship or vessel shall, to all intents and purposes, be from thenceforth considered, and deemed and taken to be a foreign ship or vessel, and shall not again be registered, and be entitled to the privileges of a British ship or vessel, unless upon special representation of the circumstances of the case to four or more of the commissioners of His Majesty's customs in England, or to three or more of the commissioners of His Majesty's customs in Scotland, or to the governor, lieutenant-governor, or commander in chief, for the time being, of the islands of Guernsey, or Jersey, or of any colony, plantation, island, or territory, to His Majesty belonging, as the case may be, the said commissioners, governor, lieutenant-governor, or commander in chief, shall respectively, on consideration of the special circumstances of the case, think fit to order; and in such case, they are hereby authorized to order that the said ship or vessel shall be registered, and be thereby again entitled to the privileges of a British ship or vessel, and such registry shall be made, and such certificate thereof shall be granted accordingly: Provided always, that all the regulations required by the laws in force, concerning the first registry of ships and vessels, shall in every such case be complied with: Provided nevertheless, that in no case of the transfer of property, in whole or in part, of any ship or vessel, in the manner herein-before-mentioned, the ship or vessel, of which the property is so transferred, shall be registered *de novo*, or be entitled to the privileges of a British ship or vessel, unless such ship or vessel shall return to the port of His Majesty's dominions to which she belongs, or to such other port in which she may be registered *de novo*, within the period of twelve months after the date of such transfer of property, if such ship or vessel shall not be on a voyage to the east of the Cape of Good Hope, or to the west of Cape Horn, or within two years, if the ship or vessel is on a voyage to the east of the Cape of Good Hope, or to the west of Cape Horn, at the time such transfer of property shall take place, except by the order of the said commissioners, governor, lieutenant-governor, or commander in chief respectively, upon special representation of the circumstances of case, in the manner herein-before authorised.

and on failure of compliance, the vessels to be deemed foreign, and not entitled to the privileges of British vessels, unless the commissioners of the customs, &c. think fit, &c.

On transfer of property vessels to be registered *de novo* within limited times.

PART II.

OF MERCHANT SHIPS AND SEAMEN.

52 Geo. III. c. 39.

An Act for the more effectual Regulation of Pilots, and of the Pilotage of Ships and Vessels on the Coast of England.—[*20th April*, 1812.]

WHEREAS ships and vessels have frequently been wrecked, and many lives and much property have been lost, from the ignorance or misconduct of persons taking charge of such ships or vessels as pilots: And whereas the corporation of Trinity-House of Deptford Strond have, as well by usage for more than three centuries, as by grants from the crown, and under the authority of an act passed in the fifth year of the reign of his late Majesty King George the Second, been empowered to appoint pilots, loadsmen or guides, to conduct ships or vessels into and out of and upon the river of Thames, through the North Channel to or by Orfordness, and round the Long Sand Head, through the Queen's Channel or other channels into the Downs, and from and by Orfordness, and up the North Channel, and up the rivers Thames and Medway, and the several creeks and channels belonging or running into the same; and to make such orders and constitutions as should be needful for the wholesome government of seafaring men, and maintenance and increase of Navigation, and of all seafaring men within the said River of Thames; in pursuance of which powers the said Corporation have from time to time appointed a sufficient number of pilots for the purposes beforementioned: And whereas there hath been, time out of mind, and now is, a society or fellowship of pilots of the Trinity-house of Dover, Deal, and the Isle of Thanet, who have had the pilotage and loadmanage of all ships from the said places up the Rivers Thames and Medway, which said Society or Fellowship have been confirmed by various acts of parliament for regulating the pilots of the Society or Fellowship of Pilots of Dover, Deal, and the Isle of Thanet, commonly called Cinque Port Pilots; notwithstanding which many persons, not having licence or authority, or competent knowledge or experience, have taken upon themselves to act as pilots for conducting ships or vessels to and from and upon the said rivers, to the great hazard of such ships or vessels, and their cargoes, and the lives of their crews: And whereas the provisions of the said acts have been found inadequate to the regulation of pilotage, and the prevention of such mischiefs, and it is therefore necessary that further and more effectual regulations

should be made for that purpose, and that all the provisions and regulations relating to the several descriptions of pilots aforesaid should be repealed: and whereas acts of parliament have been passed for establishing separate and peculiar jurisdictions in relation to pilotage in certain ports, and on different parts of the coast of England, which, by reason of the same being limited, have been found insufficient to answer the good purposes intended thereby; and it is therefore necessary that more effectual regulations should be made in relation to pilotage on the coast of England: And whereas an act was passed in the forty-eighth year of the reign of his present Majesty, intituled An Act for the better regulation of Pilots, and of the Pilotage of Ships and Vessels navigating the British seas, which is now near expiring; and it is expedient that the same should be continued, with alterations and amendments, as is hereinafter enacted: And whereas it is necessary for duly enforcing the laws respecting quarantine, on which the health of His Majesty's subjects essentially depends, that the names and places of residence of all pilots in England should be known by those whose duty it is to convey information respecting those laws from time to time to them; May it therefore please your Majesty that it may be enacted; and be it enacted by the king's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, that the said act, passed in the forty-eighth year of the reign of his present Majesty, so far as the same relates to any rates of pilotage due or to become due, or to any penalty or forfeiture incurred or to be incurred, or any other act, matter, or thing done or to be done before the commencement of the operation of any of the provisions of this act, in relation to any such matters as aforesaid, shall be, and the same is hereby continued; and that all and every the clauses, provisions, powers, penalties, forfeitures, matters, and things relating as well to pilots appointed by the said Corporation of Trinity-house of Deptford Strond, as to pilots of the Fellowship of Dover, Deal, and the Isle of Thanet, and to the pilotage by and regulation of all such pilots as aforesaid, and also as to the conduct of all persons in matters of pilotage within the jurisdiction of the said Corporation of the Trinity-house of Deptford Strond, and the liberty of the Cinque Ports, which are contained in any act or acts of Parliament heretofore made, shall be and the same are hereby repealed.

48 Geo. III. c. 104.

48 Geo. III. c. 104. continued, as far as relates to rates and penalties incurred.

Provisions in acts relating to pilots, repealed.

II. And be it further enacted, That, from and after the passing of this act, it shall be lawful for the master wardens and assistants of the guild, fraternity or brotherhood of the Most Glorious and Undivided Trinity, and of St. Clement in the parish of Deptford Strond in the county of Kent, (commonly called The Corporation of Trinity House of Deptford Strond,) and they are hereby required to appoint and license, under their common seal, fit and competent persons, duly skilled as pilots, for the purpose of conducting all ships and vessels sailing, navigating, and passing up and down, or upon the rivers of Thames and Medway, and all and every the several channels, creeks and docks thereof or therein, or leading or adjoining thereto, as well between Orfordness and London-bridge, as from London-bridge to the Downs, and from

From the passing of this act, the Corporation of Trinity house of Deptford shall license fit persons as pilots, to conduct all vessels within certain limits;

like powers given to the lord warden of the cinque ports, &c.

the Downs westward as far as the Isle of Wight, and in the English Channel from the Isle of Wight up to London-bridge: And that, from and after the passing of this act, it shall be lawful for the lord warden of the cinque ports, and constable of Dover castle, or his lieutenant for the time being, and they are hereby required to appoint and license fit and competent persons, duly skilled as pilots, for the purpose of conducting all ships and vessels sailing, navigating and passing from the westward up the Rivers Thames and Medway, that is to say, from Dungeness up to London-bridge and Rochester-bridge, and from the buoy of the brake to the westward, that is to say, from the said buoy to the west end of the Owers; all which vessels shall be conducted and piloted by such pilots so appointed and licensed, and by no other pilots or persons whomsoever; and also save and except as well all colliers as also all ships and vessels trading to Norway, and to the Cattegat and Baltic, and likewise round the North Cape, and into the White Sea; and save and except all constant traders inwards from the ports between Boulogne inclusive and the Baltic, such ships and vessels having British registers, and coming up the North Channel by Orfordness, but not otherwise; and likewise save and except all coasting vessels, and all Irish traders using the navigation of the River Thames as coasters: Provided always, that it shall be lawful after the passing of this act, for any pilot or pilots heretofore appointed by the said corporation of Trinity House of Deptford Strond, or by the lord warden of the cinque ports and constable of Dover castle for the time being, or his lieutenant for the time being, to pilot or conduct any ship or vessel within such limits as such pilot or pilots might lawfully have conducted and piloted the same before the passing of this act, under and by virtue of the licences or authorities granted to such pilots respectively as aforesaid; which respective licences shall continue in force notwithstanding this act, so that such pilots respectively do in all things conform themselves to the provisions of this act, and the rules and regulations to be established under the same.

except as herein excepted.

Rates in schedule (A.) may be demanded by pilots.

III. And be it further enacted, That, from and after the passing of this act, the respective rates or prices hereinafter enumerated in the table marked (A.) in the schedule to this act annexed, may be lawfully demanded and received by any pilot licensed by the said corporation of Trinity House of Deptford Strond, for the piloting or conducting of any ship or vessel from place to place, as expressed in the said table, and that no greater rates or prices, or other reward or emolument, shall, under any pretence whatever, be demanded, solicited, or received, than such rates or prices.

Pilots to pay annually three guineas to the Corporation of the Trinity House of Deptford, on penalty of suspension.

IV. And be it further enacted, That each and every pilot already appointed, or to be appointed, by the said Corporation of Trinity House of Deptford Strond, under the authority of this act, (except only such pilots as shall be appointed by the said Corporation upon their receiving certificates of examination, by any sub-commissioners of pilotage as hereby directed,) shall from time to time, and at all times hereafter, pay or cause to be paid to the said Corporation of Trinity House of Deptford Strond, or to such person or persons as they shall appoint to receive the same on their

behalf, the sum of three guineas in the month of January yearly, which payment shall be accepted by the said Corporation in lieu and satisfaction of and for all the ancient and accustomed duties payable by such pilots to the said Corporation, under the provisions of an act passed in the fifth year of the reign of King George the Second, or any other statute or charter whatever, and shall be applied for the use and benefit of the poor of the said Corporation, (after first defraying thereout the expences incurred by the said Corporation from time to time in carrying this act into execution;) and in case such annual payment shall not be duly made by the said pilots respectively, it shall be lawful for the said Corporation to suspend the persons so making default from acting as pilots, until due payment shall be made of such annual sums.

No person shall be licensed as a pilot by the Trinity House, except as herein specified, nor take charge of a ship drawing more than fourteen feet water, on penalty on himself and the master of the ship.

V. And be it further enacted, That no person shall be licensed by the said Corporation of Trinity House of Deptford Strond, as a pilot for the Rivers of Thames or Medway, or the channels leading thereto or therefrom, under the provisions of this act, who shall not have served as mate for three years on board a square-rigged vessel, or shall not have been in the actual command of a square-rigged vessel for one year, or who shall not have been employed in the pilot service of the Corporation of Trinity House of Deptford Strond for seven years, or who shall not have served an apprenticeship of five years to some pilot vessel licensed under this act; and that no person shall be so licensed, or be allowed until after three years' licence and service, to take charge as a pilot of any ship or vessel drawing more than fourteen feet water, in the Rivers Thames or Medway, or any of the channels thereof, until such person shall have been licensed, and shall have acted as a pilot for three years under lawful authority, on pain of forfeiting ten pounds for every such offence, as well by the person acting as such pilot, as also by the master or commander, or other person having charge of such ship or vessel, who shall permit any such person to take charge as a pilot of the same, contrary to the provision aforesaid.

No cinque port pilot shall take charge of any ship till he has been admitted, on penalty.

VI. And be it further enacted, That no person shall, from and after the passing of this act, take charge of any ship or vessel, as a pilot belonging to the Society or Fellowship of Pilots of Dover, Deal, and the Isle of Thanet, commonly called cinque port pilots, before he shall be examined by the master and two wardens, or by four wardens of the said Society or Fellowship for the time being, touching his abilities, and shall be approved and admitted into the Society or Fellowship of the Trinity House of Dover, Deal, and the Isle of Thanet, by the lord warden of the cinque ports and constable of Dover castle for the time being, or his lieutenant for the time being; and if any person shall presume to act as a pilot belonging to the said Society or Fellowship, without having been so examined, approved, and admitted as aforesaid, every such person shall for the first offence forfeit ten pounds, for the second twenty pounds, and for every other offence forty pounds.

Pilots of lower class to be allowed after certain period of service to

VII. And be it further enacted, That no person belonging as a pilot to the Society or Fellowship of Pilots of Dover, Deal, and the Isle of Thanet, commonly called cinque port pilots, shall from and after the passing of this act, be allowed to take charge as a

take charge of ships of greater draught than heretofore in absence of pilots of higher class.

pilot of any ship or vessel drawing more than eleven feet six inches water, until he shall have been licensed and acted as a pilot for three years, or of any ship or vessel drawing more than fourteen feet water, until he shall have been licensed and acted as a pilot for two years more, making five years in the whole, or of any ship or vessel drawing more than seventeen feet water, until he shall have been licensed and acted as a pilot two years more, making seven years in the whole; and at the expiration of such period of seven years, such pilot shall be again examined as to his fitness and competency, and if he shall be approved of in such examination and licensed, shall be authorised and allowed and entitled to take charge of any ships or vessels of any draught of water: Provided always, that in case of the absence of pilots who have been licensed and have acted as such for the terms of three years and upwards, five years and upwards, and seven years and upwards respectively, the pilots in the lower classes may take charge of ships drawing more water than hereinbefore specified for their respective years of service, and shall not in such case be liable to any penalties for so doing; nor shall the masters of the ships who may take any such pilot on board in the absence of the pilots of the upper classes, nor the owners of such ships be answerable for any loss or damage, nor shall any owner or owners of any ship or vessel, or consignee of goods, be prevented from recovering any loss or damage upon any contract of insurance of the same, or upon any other contract relating to any such ship or vessel, or any cargo on board the same, by reason of such pilots being so employed in their ships in the absence of the others: Provided always, that in any such case the proper flag shall be kept flying, within the limits and distances hereinafter mentioned, and for the period of one hour after the vessel shall have been at anchor, as is in this act provided for cinque port pilots coming on board of any vessel within such limits; and the master or person commanding any such ship or vessel shall be subject to the penalties and forfeitures by this act imposed for neglecting to keep a pilot signal flying accordingly, although he shall have agreed to take any such pilot of a lower class, in case of no other pilot coming on board; and any pilot having such licence as shall qualify him to take charge of any such ship or vessel on board of which any such pilot of a lower class shall so be, shall be entitled within such time, limits, and distance as aforesaid, to supersede such pilot of a lower class.

Master and wardens of the Trinity Houses of Dover, &c. appointed to examine pilots, shall take the oath in schedule (C.)

VIII. And be it further enacted, That the master, and such wardens of the said Society or Fellowship of Pilots of the Trinity House of Dover, Deal, and the Isle of Thanet, as shall be appointed from time to time to examine into the skill and ability of any person on his being first admitted as a pilot into the said Society or Fellowship, or after he shall have been licensed and served for seven years, shall take the oath marked (C.) in the schedule hereunto annexed, to be administered unto him by the register of the Court of Loadmanage, who is hereby authorised to administer such oath.

Rates in schedule (B.) may be demanded by such licensed pilots.

IX. And be it further enacted, That from and after the passing of this act, the respective rates or prices hereinafter enumerated in the table marked (B.) in the schedule to this act annexed, may be

lawfully demanded and received by any pilot licensed by the lord warden of the cinque ports and constable of Dover castle for the time being, or his lieutenant for the time being, for the conducting of any ship or vessel from place to place, as expressed in the said table; and that no greater rates or prices, or other reward or emolument, shall, under any pretence whatever, be received, than such rates or prices.

A sufficient number of cinque port pilots shall constantly ply to take charge of ships coming from the westward; and, upon making signals of fleets from the westward, all pilots shall prepare to go off, on certain penalties.

X. And be it further enacted, That a proper and sufficient number of pilots of the cinque ports, not less than eighteen at any one time, and in succession, from time to time, without intermission or any unnecessary delay, shall, at all seasonable times, by day and night, constantly ply at sea, or be afloat, between the South Foreland and Dungeness, to take charge of ships and vessels coming from the westward; and proper signals shall be established, to be made at and from signal houses now erected, or which may be erected on commanding situations near to Dover, to give notice of fleets of vessels coming from the westward; and upon the making of any signals, giving notice of the approach of any fleet from the westward, all cinque port pilots not on duty at the time shall, according to such rules and regulations, as to number, rotation, or otherwise, as have been or shall be made in that behalf, forthwith prepare to go afloat, and shall go off in sufficient time to fall in with such ships or vessels, on pain of forfeiting, in case of neglect herein, for the first offence the sum of twenty pounds, and for the second the offender shall be suspended from acting as a pilot for twelve months, and for the third offence shall forfeit his licence to act as such pilot, and shall be rendered thereby incapable of acting thereafter [illegible].

Masters of ships from the westward not having a cinque port pilot, shall display a signal for one, and facilitate his getting on board, on penalty for neglect.

XI. And be it further enacted, That the master or other person having the command of any ship or vessel coming from the westward, and bound to any place in the Rivers of Thames or Medway, not having a duly qualified cinque port pilot on board, shall, on the arrival of such ship or vessel off Dungeness, and until she shall have passed the buoy of the brake, or a line to be drawn from Sandown castle to the said buoy, (unless in the mean time she shall have received a proper cinque port pilot on board,) display and keep flying the usual signal for a pilot to come on board; and if any duly qualified cinque port pilot shall be within hail, or approaching, and within half a mile, with the proper distinguishing flag or vane flying in his vessel or boat, the master or other person having the command of such ship or vessel shall, by heaving to in proper time, or shortening sail, or by all practicable means consistently with the safety of the ship or vessel, facilitate such pilot getting on board, and shall give the charge of piloting his ship or vessel to such cinque port pilot; and every person commanding any such ship or vessel, who shall not display and keep flying the usual signal for a pilot to come on board, from the time such ship or vessel shall have arrived off Dungeness, and until the vessel shall have passed the buoy of the brake in a line to be drawn from Sandown castle to the said buoy, (unless in the mean time a duly qualified pilot shall have come on board,) or who shall decline to take any such cinque port pilot on board, or to give such charge of his ship or vessel to such pilot, or who shall not heave to,

shorten sail, or otherwise facilitate such pilot coming on board as aforesaid, consistently with the safety of the ship or vessel, shall forfeit and pay double the amount of the sum which would have been demanded for the pilotage of such ship or vessel, and shall forfeit the further sum of five pounds for every fifty tons' burthen of such ship or vessel: Provided always, that such additional penalty of five pounds for every fifty tons shall not in any case be sued for or recovered, unless the Corporation of the Trinity House, as to all cases in which pilots licensed by or under the said Corporation shall be concerned, or unless the said lord warden for the time being, or his lieutenant for the time being, shall license and authorise by written certificate the proceeding for such additional penalty as to all causes in which pilots by or under the said lord warden shall be concerned: Provided always, that if any ship or vessel bound to the Rivers Thames or Medway shall anchor any where in the Downs between the South Foreland, and a line drawn from Sandown castle and the south buoy of the brake, having any licensed pilot other than a cinque port pilot on board, it shall be lawful for a cinque port pilot to repair on board the same, at any time before such ship or vessel shall have been at an anchor one hour with the signal for a pilot flying, and to take charge of her up the said rivers, but not otherwise.

Cinque port pilots may repair on board ships at anchor, within certain distances, not having such pilot on board.

Cinque port pilots quitting ships before arrival at the place to which bound, in the Thames or Medwsy, without consent of the master, liable to penalties.

XII. And whereas great convenience to trade will arise by putting an end to the usage of cinque port pilots quitting ships or vessels at Gravesend, or elsewhere in the Thames or Medway, at their discretion; be it therefore enacted, that from and after the passing of this act, if any cinque port pilot, taking charge of any ship or vessel into the Thames or Medway, shall quit such ship or vessel at Gravesend, or in any other part of the Thames, or in any part of the Medway, before such ship or vessel shall have arrived at the place to which such ship or vessel is bound in the said rivers Thames or Medway respectively, without the consent of the captain, or other person having the command thereof, unless some other duly qualified pilot shall with such consent come on board, and shall take the charge and conduct of such ship or vessel for the residue of the pilotage to be performed, every such pilot shall forfeit for every such offence all pay or reward to which he might be entitled for having conducted or piloted such ship or vessel into the rivers Thames or Medway, and shall also be subject to such other penalty or punishment as, by virtue of any of the provisions of this act, or of the rules and regulations to be established in pursuance hereof, any pilot shall be liable to for quitting a ship or vessel before she shall arrive at her place of destination.

Court of loadmanage to settle the compensation to be paid to the upper book pilots, by the lower book pilots, for being allowed to take charge of ships of greater draught.

XIII. And whereas the pilots of the cinque ports are divided into two classes, called the upper and lower book pilots: And whereas the permitting cinque port pilots of the lower book to take charge of ships which heretofore would only be taken by pilots of the upper book, will diminish the profits of the upper book pilots, and increase the profits of the lower book pilots; and it is therefore reasonable that compensation should be made by the lower book pilots to the persons who are at this time upper book pilots; be it therefore enacted, that it shall be lawful for the court of loadmanage from time to time to settle the amount of the de-

ductions to be made from the rates received by lower book pilots for taking charge of vessels of greater draught of water than they could heretofore by law take, and in what proportions, and how and in what manner, and to whom the same are to be paid, and how the same shall be applied in making compensation to the present upper book pilots for the losses they may sustain by such lower book pilots taking charge of such vessels as aforesaid; provided that such deductions so to be fixed as aforesaid shall from time to time be diminished and decreased as the present sixty-four upper book pilots shall die, be superannuated, or discontinue to act as pilots; and that such deductions shall be taken and accepted in lieu of all other allowances or contributions whatsoever from the said lower book pilots, except Trinity money, clerks' fees, and for widows.

XIV. And be it further enacted, that all persons licensed to act as cinque port pilots shall from time to time, and at all times hereafter, be subject to the regulation and government of the lord warden of the cinque ports and constable of Dover castle for the time being; and the master and wardens of the said society or fellowship of pilots of Dover castle and the isle of Thanet, and the lord warden of the cinque ports, constable of Dover castle for the time being, his lieutenant for the time being, and the deputy lieutenant for the time being, or either of them, with the assent of the commissioners of loadmanage, or the major part of them present at an assembly commonly called a court of loadmanage, to be held by the said lord warden or his deputy, shall, within four calendar months after the passing of this act, proceed to make, and shall make sufficient rules and orders for enforcing the due observance of the provisions of this act by all cinque port pilots, and for providing for the good government, constant attendance, and regulation of all such pilots, as well relating to the services of the said pilots in going off to and taking charge of and conducting and navigating His Majesty's ships and vessels, and the ships and vessels in His Majesty's employ, and also all ships and vessels whatever and wheresoever within the proper and usual limits of such pilots, or wherein they shall for the time being act or be, and for effectually securing the performance of all the duties and services of such pilots at all times; and from time to time to annul, alter, or amend all and every of such or of any existing rules or orders, or bye laws, and to make such other bye laws, rules, and regulations as they shall deem fit and proper; and all such rules and regulations hereafter to be made shall, before the same are allowed to take effect or become binding on any person or persons whatever, be forthwith printed and transmitted to the custom-house in London, and there hung up in some conspicuous place in the long room of the said customs; and notices shall be published in the Gazette, and also put up at the custom-houses within the cinque ports, of such bye laws, rules, and regulations, or any alterations thereof, for inspection, for one calendar month, in order that any persons interested therein, whether as owners or masters of ships, or pilots, or otherwise, may transmit to the lord warden of the cinque ports, or his lieutenant, any objections which they may have thereto, for the purpose of the same being altered or

Directing rules to be made for cinque port pilots.

confirmed; and if no objection to the rules and regulations so made or altered shall be proposed by or on the behalf of any person or persons within the space of thirty days after the notices shall have been given and made public in the manner hereinbefore provided, they shall have the same force and effect, to all intents and purposes, as all other rules and regulations for the governance of pilots within the jurisdiction of the cinque ports have; but if an objection shall be made to the lord warden or his lieutenant, by or on behalf of any person or persons, to any rule or regulation, or to any alteration in any rule or regulation, of which notice shall be given as aforesaid, within thirty days after the publication thereof, then and in such case the operation thereof shall be suspended until reference shall be had to His Majesty's most honourable privy council, who are hereby authorised and empowered to hear, as well any person who shall be deputed by the court of loadmanage, as by the person or persons objecting, and finally to decide as to the confirming, altering, or rejecting such rules or regulations, which decision of the privy council shall be final, and be binding on all parties; and copies thereof shall be delivered to every member of the said society, and also to every new member of the said society on his election, and a copy or extract thereof shall be at all times in the possession of every pilot belonging to the cinque ports, as well those already admitted and licensed as all others hereafter to be licensed as such pilots; and it shall be lawful in such rules and regulations to establish rates of payment out of such surplus earnings of the lower book pilots, as may arise from their being allowed to take the higher classes of ships in the absence of pilots of the upper book, under the provisions of this act, for the better support and maintenance of the upper book pilots, and also penalties and forfeitures for the enforcing such rules and regulations, and better ordering of the said pilots, and for suspending or depriving any of the said pilots of their licences for breaking such rules or orders, or omitting to do any thing required by the same to be done, or for acting in any wise contrary to such rules or orders.

If such rules shall not be duly made and transmitted, or shall be defective, the privy council shall order proper rules to be drawn up and distributed.

XV. Provided always, and be it further enacted, that if such rules and regulations, in relation to cinque port pilots, shall not be made and transmitted as aforesaid within four calendar months after the passing of this act; or if such rules and regulations, when made and transmitted, shall appear to be in any material point erroneous, insufficient, or defective, it shall be lawful for any owner of ships, or other persons interested in the matter of such rules or regulations, to apply to His Majesty's most honourable Privy Council, who shall thereupon cause proper and sufficient rules and regulations to be drawn up for the purposes aforesaid, in case no such rules and regulations shall have been made and transmitted as aforesaid, or shall amend, correct, or enlarge any such rules and regulations as shall have been made and transmitted; which rules and regulations so made, or so amended, collected and enlarged, shall be distributed, published, and made use of, in such manner as His Majesty's said Privy Council shall in that behalf appoint and direct; and the same shall take effect from such time

as in the said rules or regulations shall be expressed in regard to the commencement thereof.

The number of cinque ports shall be increased.

XVI. And whereas, under the provisions of an act passed in the third year of his late Majesty King George the First, the number of pilots of the cinque ports was to be one hundred and twenty at the least, and it has been found by experience that the said number is inadequate to the increased trade and navigation of this kingdom; and by an act passed in the forty-eighth year of the reign of his present Majesty, the number of such pilots were increased to one hundred and forty; be it therefore enacted, that twenty cinque port pilots more shall be added whenever such further addition shall be directed to be made by an order of His Majesty's privy council, upon application made to His Majesty in council for that purpose by the Corporation of Trinity-house of Deptford Strond; and that a further addition of twenty cinque port pilots shall be made to the number above-mentioned, increasing the whole number to one hundred and eighty, by the like authority, whenever such last-mentioned addition shall be applied for, by the Corporation of the Trinity-house of Deptford Strond, to His Majesty in council.

The increased number of pilots shall be kept up; but after a definitive treaty of peace with France vacancies shall be filled up by permission of the privy council.

XVII. And be it further enacted, that whenever the increased numbers of the said pilots shall respectively take place as hereinbefore provided, the numbers so increased shall from thenceforth be kept up from time to time by the appointment of pilots in succession as often as any vacancy or vacancies shall happen by death, incapacity, or dismission; provided that, after the conclusion of a definitive treaty of peace with France, no vacancy shall be filled up as aforesaid without a special permission in that behalf given by His Majesty's Privy Council, upon the recommendation of the said Corporation of Trinity-house, unless the number of pilots shall at any time, by death or otherwise, be reduced below one hundred and forty, in which case the vacancies shall be filled up from thenceforth from time to time so as not to exceed one hundred and forty in the whole.

Pilots shall qualify themselves to conduct, and shall conduct ships into and out of Ramsgate, Dover, Sandwich, and Margate harbours, on penalty for refusal.

XVIII. And whereas certain harbours near the Downs have become much frequented as places of safety, and ships and vessels lying in or sailing through the Downs are oftentimes compelled to run for those harbours, and it is therefore necessary to make provision for the pilotage of such harbours; be it therefore enacted, that all pilots whose licenses or warrants shall authorise them to pilot ships or vessels from any place to the westward up to London bridge, shall qualify themselves, and shall be examined as to their qualification and ability to conduct any ship or vessel into and out of Ramsgate harbour, and the harbours of Dover, Sandwich, and Margate, and shall be obliged to pilot any ships or vessels into and out of the said harbours; and if any such pilot shall refuse to take charge of or conduct any ship or vessel into or out of any of the said harbours, such pilot shall forfeit all pay and reward to which he might otherwise be entitled for the pilotage of any such ship or vessel, and shall be subject to such fine or other punishment as shall be established in that behalf by the rules and regulations of the corporation or society to which such pilot shall belong.

Rates for such pilotage.

XIX. Provided always, and be it further enacted, that every licensed pilot who shall take charge of and conduct any ship or vessel into or out of Ramsgate harbour, or into or out of Dover, Sandwich, or Margate, shall be entitled to and shall receive for such pilotage at and after the rate of five shillings for every foot of the draught of water of the ship or vessel so piloted and conducted by him into or out of any such harbour, if such ship or vessel shall have been so piloted and conducted into or out of the same in moderate weather; but if under any circumstances of distress, then such pilot shall be entitled to such further sum of money, to be calculated according to the extent and circumstances of such distress, as the commissioners of salvage, established under the lord warden of the cinque ports, shall, upon application either of the pilot, or owner or master, of any such ship or vessel, upon enquiring into all such circumstances, direct; and such commissioners shall, and they are hereby required, upon any such application made, to enquire into all such circumstances, and to determine the amount of the sum so to be paid for the pilotage of any such ship or vessel into the said harbours respectively: Provided always, that on the arrival of any ship or vessel, and as soon as she shall be moored in any of the said harbours, it shall be lawful for the pilot to demand the pilotage due to him as aforesaid, and to quit the ship forthwith.

Pilotage may be demanded as soon as the ship is moored.

The Trinity house of Deptford shall appoint sub-commissioners of pilotage to examine persons to act as pilots at the requisite ports; and on certificate of their being qualified, may grant them licences.

XX. And be it further enacted, that it shall be lawful for the said Corporation of Trinity-house of Deptford Strond, and they are hereby required to appoint from time to time (as often and for such periods as they in their discretion shall think fit) proper and competent persons at such ports or places in England as they may think requisite (except within the liberty of the cinque ports, and all such other ports and places within or for which provision shall have been made by any act or acts of parliament, or by any charter or charters for the appointment of pilots) not to exceed five nor less than three persons at each port or place for which any such appointment shall be made, which persons so to be appointed shall be called sub-commissioners of pilotage, and shall take the oath in the schedule hereunto annexed, marked (D.) for the faithful discharge of their duty; and such persons so to be appointed shall and they are hereby authorised (so long as their respective appointments shall not be revoked or superseded, by the appointment of other persons in their places,) to examine into the qualification of persons to act as pilots for such respective ports and places, and the adjoining coasts, specified in their respective appointments as aforesaid; and it shall be lawful for the said corporation, upon their receiving a satisfactory certificate, under the hands of any three of the persons so to be appointed, where the whole number of any port or place shall consist of four or five, and by any two where the whole number shall consist of three, that the person examined as aforesaid is duly qualified to act for such port or ports, and the adjoining coasts, to give a licence to such person to act as a pilot within the particular limits (describing the same) for which he shall have passed such examination; which licence shall be granted in the first instance for one year, and shall afterwards from year to year be subject to renewal

and confirmation, or otherwise, at the discretion of the said Corporation of Trinity House: Provided always, that such sub-commissioners as have been already appointed under the authority of the said act of the forty-eighth year of his present Majesty shall continue to act in the same manner as if they were appointed under this act.

Sub-commissioners already appointed shall continue to act.

XXI. Provided always, and be it further enacted, that it shall be lawful for the Corporation of the Trinity House of the ports of Hull and Newcastle respectively, to appoint sub-commissioners of pilotage to examine pilots and give licences for pilots for piloting ships and vessels into or out of any ports, harbours, or places, within the limits of their respective jurisdictions; any thing in this or any act or acts of parliament to the contrary notwithstanding.

The Trinity houses of Hull and Newcastle may appoint sub-commissioners to examine pilots, &c.

XXII. Provided always, and be it further enacted, that nothing in this act contained shall be construed to prevent any ship or vessel which shall be brought into any port or ports in England by any pilot duly licensed, from being afterwards removed in such port or ports by the master or mate, or other person belonging to any such ship or vessel, and having the command thereof, or if in ballast, by any other person or persons appointed by any owner, or the master, or any agent of the owner, for the purpose of entering into or going out of any dock, or for changing the moorings of such ship or vessel.

Ships brought into any port by pilots may be removed by the master, &c. for certain purposes.

XXIII. And be it further enacted, that when and as soon as the said Corporation of Trinity House of Deptford Strond shall have licensed pilots for any particular port or ports, and the respective coasts near the same as aforesaid, they shall cause notice of such appointment to be published, by fixing up such notice in writing at the Trinity House, and at the custom-house in London, and also at the respective custom-houses of the ports for which, and the coasts near the same, such appointment shall be made; and shall also, afterwards, cause such notice to be published in the London Gazette, and in one or more newspapers circulated in that part of the country where the ports shall respectively be situated, which publication in the London Gazette shall be good and sufficient evidence of the notice having been given; and from and after a time or times to be limited in the said notices, which shall not in any case, or in relation to any ships or vessels whatever, be less than six weeks from the publication thereof as aforesaid, and shall be proportionably more, at the discretion of the said corporation, in relation to ships and vessels engaged in foreign voyages at the time of such publication, all ships and vessels sailing, navigating, or passing into or out of the said respective ports, or upon the coasts thereof, shall be conducted and piloted by such pilots only as shall be so licensed as aforesaid, and by no other pilots whomsoever.

Notice of appointment of pilots to be fixed up at the Trinity House, &c. after which no other pilot shall act.

XXIV. And be it further enacted, that if any person suspended, or adjudged to have forfeited his licence as a pilot, shall, during the time of such suspension, or after such adjudication, take upon himself to conduct any ship or vessel, except in cases of distress; and in cases where no licensed pilots can be found, such person shall be liable to all such penalties, to be recovered and applied in

Pilots suspended or deprived of licence, liable to penalty for acting.

like manner and form as are provided by this act against any person who shall conduct or pilot any ship or vessel without ever having been licensed as a pilot.

Pilots so suspended, &c. may appeal to the Privy Council.

XXV. Provided always, and be it further enacted, that every pilot who shall be suspended, or adjudged to have forfeited his licence, and every person who, having complained of any such pilot, shall be dissatisfied with the adjudication made upon the matter of such complaint by the corporation, society, or persons who shall have cognizance of such complaint, may appeal to His Majesty's Privy Council, who shall thereupon hear the appeal, and confirm or annul any former determination or adjudication in the premises, or at their discretion make any particular and special order relating thereto, and to the matter of such appeal, as the case may require.

Owners or masters of ships shall not be answerable for any loss, nor consignees prevented from recovering insurance, for want of pilots, &c.

XXVI. Provided always, and be it further enacted, that no owner or master of any ship or vessel shall be answerable for any loss or damage, nor shall any owner or owners of any ship or vessel, or consignee of goods, be prevented from recovering any loss or damage upon any contract of insurance of the same, or upon any other contract relating to any ship or vessel, or any cargo on board the same, by reason of no pilot being on board of any such ship or vessel, unless it shall be proved that the want of a pilot shall have arisen from any refusal to take a pilot on board, or from the wilful neglect of the master of the ship or vessel in not heaving to or using all practicable means consistently with the safety of the vessel for the purpose of taking on board any pilot who shall be ready and offer to take charge of such ship or vessel.

Owners not liable for more than the value of the ship and freight.

XXVII. Provided always, and be it further enacted, that no owner of any such ship or vessel shall be liable, in any such case, for any loss or damage beyond the value of such ship or vessel and her appurtenances, and the freight due or to grow due for and during such voyage wherein such loss or damage may happen or arise.

Act not to extend to ships belonging to His Majesty;

XXVIII. Provided always, and be it further enacted, that nothing in this act contained shall extend, or be construed to extend, to any ships or vessels belonging to His Majesty, his heirs and successors, as to their being compelled to take pilots on board.

nor to vessels not exceeding 60 tons.

XXIX. Provided always, and be it further enacted, that none of the clauses, provisos, penalties, or regulations of this act, shall extend, or be construed to extend, to any vessel not exceeding the burthen of sixty tons, having British registers, nor to any master or owner of any such vessel in respect thereof, or of the navigating of the same in any channel, river, port or place whatever.

Owners not to be liable for loss arising from incompetency of pilots, &c.

XXX. Provided always, and be it further enacted, that no owner or master of any ship or vessel shall be answerable for any loss or damage, nor shall any owner or owners of any ship or vessel, or consignee of goods, be prevented from recovering any loss or damage upon any contract of insurance of the same, or upon any other contract relating to any ship or vessel, or any cargo on board the same, for or by reason or means of any neglect, default, incompetency, or incapacity of any pilot taken on board of any

such ship or vessel under or in pursuance of any of the provisions of this act.

XXXI. And be it further enacted, that nothing in this act contained shall be construed to extend to deprive any persons of any remedy, by civil action against pilots or other persons, which they might have had if this act had not been passed.

Act not to deprive persons of remedy by civil action.

XXXII. And be it further enacted, that nothing in this act shall extend, or be construed to extend, to the taking away, abridging, defeating, impeaching, or interrupting of any grants, liberties, franchises, or privileges heretofore granted by any charters or acts of parliament to the pilots of the Trinity House of the town of Kingston-upon-Hull, or the Trinity House of Newcastle-upon-Tyne, or to give any authority to the Corporation of the Trinity House of Deptford Strond, within any ports or districts having separate jurisdictions in matters of pilotage under any act of parliament or charter; or to alter or repeal any provisions contained in any act or acts of parliament relating to the pilots of any ports or districts in relation to which provisions shall have been made in any act or acts of parliament, as to pilots or pilotage, or the pilotage within the limits prescribed by any act or acts of parliament relating to pilotage for such ports, or to the burthen of vessels navigating to or from such ports.

Act not to affect any districts having separate jurisdiction.

XXXIII. Provided always, and be it further enacted, that nothing in this act contained shall extend to prevent or hinder the master or mate of any ship or vessel, or owner or part owner, residing at Dover, Deal, or the Isle of Thanet, from conducting or piloting his own ship or vessel up or down the Rivers Thames or Medway, or into or out of any port or place within the jurisdiction of the cinque ports.

Not to prevent the masters, &c. of ships residing at Dover, &c. from piloting their own ships in the Thames or Medway.

XXXIV. Provided also, and be it further enacted, that it shall be lawful for any licensed pilot to supersede any person not licensed as a pilot in the charge of any ship or vessel within the limits of his licence: And every master of any ship or vessel who shall continue to act himself as a pilot, or who shall continue any unlicensed person, or any licensed person acting out of the limits for which he is qualified as a pilot, after any pilot licensed to act within the limits in which such ship or vessel shall then actually be, shall have offered to take charge of the ship or vessel; and every person assuming or continuing in the charge or conduct of any ship or vessel without being duly licensed to act within the limits in which such ship or vessel shall actually be, after any pilot duly licensed and qualified to act in the premises shall have offered to take charge of such ship or vessel; shall respectively forfeit for every such offence a sum not exceeding fifty pounds, nor less than twenty pounds.

Licensed pilots may supersede unlicensed ones; penalty on masters continuing unlicensed pilots, &c. after a proper pilot shall have offered to take charge of the ship.

XXXV. And be it further enacted, that it shall be lawful for the Corporation of Trinity House of Deptford Strond, and they are hereby authorised and required to establish, vary and alter, from time to time as circumstances shall render the same necessary, regular rates of pilotage in relation to all pilotage performed in any river, port, or place, or upon any coast whatever, by any pilot or pilots who shall be licensed by the said Corporation, upon their receiving certificates of examination from any sub-commis-

Trinity House of Deptford shall establish rates of pilotage, which shall be hung up at the respective custom-houses.

sioners of pilotage hereby directed to be appointed; which rates shall be regulated by and proportioned as well to the size and draught of water of the vessels, as to the distance piloted, the detention and responsibility of the pilot, and such other circumstances as the said Corporation may think fit to take into consideration in fixing and establishing such rates; of which establishment or alterations of rates of pilotage notice shall be given by hanging up printed tables thereof, corrected from time to time as variations therein shall be made, at the several custom-houses at the ports to which the said rates shall apply.

Majority of pilots or owners of ships, being dissatisfied with the rates, may appeal to the Privy Council, who may determine the matter.

XXXVI. Provided always, and be it further enacted, that if the major part in number of the pilots who shall be licensed by the said Corporation of Trinity House of Deptford Strond, for any particular port or place, in consequence of their receiving certificates of examinations as aforesaid, shall be dissatisfied with the rates so established or altered, or in case any owners of ships or vessels, interested in any such rates, shall be dissatisfied with such respective rates, it shall be lawful for such parties respectively to appeal to the lords of His Majesty's most honourable Privy Council; and it shall be lawful for any committee of such Privy Council, calling to their assistance any such persons as they may think fit, to hear and determine the matter of such appeal or appeals, and to settle, alter, and regulate such rates, as to them shall appear to be expedient, in case the matter of such appeal shall in the discretion of the said committee of privy council appear to require the making any orders therein.

Trinity House may make bye laws, and annex penalties to breach of them.

XXXVII. And be it further enacted, that all persons licensed to act as pilots, or in pilot vessels, by the said Corporation of Trinity House, by virtue of this act, shall from time to time and at all times hereafter be subject to the regulation and government of the master, wardens and assistants of the said Corporation, who are hereby authorised and empowered, as well for insuring the good conduct and constant attendance of such pilots upon their duty, as for enforcing the general purposes of this act, from time to time to make and frame all such bye laws, rules, orders, regulations, and ordinances, as they shall think fit, therein specifying and directing also what annual or other sums shall be paid by any such pilots to the sub-commissioners of pilotage, for the examination of such pilots, and for granting and renewing or confirming their licences from time to time; and it shall be lawful for the said master, wardens, and assistants of the said Corporation respectively, to annex such reasonable penalties and forfeitures for the breach of such bye laws, rules, orders, and ordinances, when made, as to them shall seem expedient in that behalf, and from time to time to annul, alter, and amend, all or any of the existing bye laws, and to make such other and new bye laws, rules, orders, and ordinances, as they shall think proper, so as such bye laws, rules, regulations, and ordinances, be made conformable to the true intent and meaning of this act, and shall not be repugnant to the laws of this realm: Provided always, that no bye laws hereafter shall have force or effect before they shall have been examined, sanctioned, and approved by the chief justice of His Majesty's Court of King's Bench, or by the chief justice of His Majesty's

Bye laws to be sanctioned by the chief justice of the King's Bench or Common Pleas.

Court of Common Pleas, the sanction and approbation of either of which chief justices shall be verified under his hand and seal; and all and every such bye laws, rules, orders, and ordinances, when so made and confirmed as aforesaid, shall be observed and kept, and put in execution, and have the same force and effect and operation, to all intents and purposes, as if the same were respectively enacted by this act.

Copies of proposed bye-laws to be previously transmitted to the Privy Council, and to the commissioners of customs, who shall cause printed copies to be hung up at the custom-houses.

XXXVIII. And, in order that all such bye laws, rules, and regulations, may be previously examined by the parties interested therein, be it further enacted, That copies of all such proposed bye laws, rules, and regulations, shall be transmitted to His Majesty's Privy Council, and to the commissioners of customs in London, three calendar months before the same shall be submitted to such chief justice as aforesaid; and the commissioners of the customs are hereby required, upon the receipt of such copies, to cause the same to be printed and hung up, as soon as the same can be done, in the several custom-houses of the principal ports in Great Britain, to be open to the inspection of all persons interested therein at all seasonable times; and notice shall be given in the Gazette of such bye laws being so hung up for inspection as aforesaid.

Copies of bye-laws confirmed, to be hung up in the custom-houses and the Trinity House.

XXXIX. And be it further enacted, That all copies of such bye laws, rules, orders, and ordinances, as shall be so made and confirmed as aforesaid, shall be printed, and shall be hung up in some public or conspicuous place in the several custom-houses of the ports in England within the limits for which the pilots respectively shall be licensed; and also at the Trinity House in London.

Persons applying for licences shall execute a bond for securing obedience to bye-laws.

XL. And be it further enacted, That every person who shall apply for a licence to act as a pilot by virtue of this act shall, before any licence shall be granted to him, execute a bond in a penal sum, at the discretion of the said Corporation of Trinity House of Deptford Strond, or the Society or Fellowship of Pilots of Dover, Deal, and the Isle of Thanet, in an amount not exceeding one hundred pounds, to be paid to the said corporation or society, their successors and assigns, with a condition subjoined thereto for better securing the due obedience of such pilot to the bye laws, rules, orders, regulations, and ordinances made in pursuance of the said act, or which shall be made and framed pursuant to this act; which bond shall be capable of being given in evidence in any court of law or equity, without being stamped according to the laws relating to the stamp duties: Provided always, that all bonds before given by pilots under any former act shall continue in force, and be deemed to be given under this act unless new bonds shall in any case be required by the said corporation or society respectively, in which case new bonds shall be given.

Bye-laws, &c. under former act to remain valid, unless altered by this act.

XLI. And be it further enacted, That all bye laws, rules, regulations, and orders made under the said recited act of the forty-eighth year aforesaid, and in force under the same at the time of the passing of this act, shall remain and continue in full force until the same shall be annulled or allowed under this act, or other bye laws, rules, and regulations shall be made under this act in lieu thereof; and shall be and are hereby declared to be good and valid bye laws, rules, and regulations, and orders, under this act,

as fully as if they had been made under the authority of the same, any thing hereinbefore or in the said recited act to the contrary notwithstanding.

Masters of vessels bound to the Thames repairing to Standgate Creek to pay full charges of pilotage, &c.

XLII. And be it further enacted, That the master or person commanding any ship or vessel bound to the river Thames, and which shall repair to Standgate Creek for the performance of quarantine, shall pay the full charges of pilotage up to Gravesend or Standgate Creek or other place appointed for the performance of quarantine; and every pilot conducting any such vessel to Standgate Creek shall be entitled to eight shillings *per diem*, for the days he shall be obliged to remain on quarantine.

Pilots quitting ships at Standgate Creek before arrival at the place, to which bound, to forfeit pay, and be liable to penalty.

XLIII. And be it further enacted, That if any pilot taking charge of any ship or vessel into the Rivers Thames or Medway, shall quit such ship or vessel at Standgate Creek before such ship or vessel shall have arrived at the place to which such ship or vessel is bound in the Rivers Thames or Medway respectively, without the consent of the captain or other person having the command thereof, unless some other duly qualified pilot shall come on board, and shall take the charge and conduct of such ship or vessel for the residue of the pilotage to be performed, every such pilot shall forfeit for every such offence all pay or reward to which he might be entitled for having conducted or piloted such ship or vessel to Standgate Creek, and shall also be subject to such other penalty or punishment as by virtue of any of the provisions of this act, or of the rules and regulations to be established in pursuance hereof, any pilots shall be liable to for quitting a ship or vessel before she shall arrive at her place of destination.

Description of pilot to be indorsed on his licence, &c.

XLIV. And be it further enacted, That a particular description of the person of every pilot shall be written in, or upon, or indorsed on the back of his licence; and every captain or master, or other person having the command of a ship or vessel, on receiving a pilot on board, shall inspect his licence; and if he shall have reason to think that such pilot is not the person to whom the licence was granted, such captain or master, or other person having the command of such ship or vessel, is hereby required forthwith to transmit a copy of such licence to the corporation or persons by whom such licence shall have been granted, stating the date thereof, together with such account and description of the person producing such licence or warrant, as may lead to the discovery of the offender.

Pilots keeping public-houses, &c (unless authorised) or offending against the revenue laws, &c. shall be dismissed or suspended.

XLV. And be it further enacted, That from and after the passing of this act, if any pilot licensed by virtue of this act, or otherwise duly licensed, shall keep or be concerned in keeping, either by himself or any agent or servant or other person, or shall in any way be interested in the keeping of any public-house or tavern, or place of public entertainment, or in the selling of any wine or spirituous liquors, or tobacco or tea, (unless such pilot shall have kept or been concerned or interested in the same before the 1st day of March, 1808, and shall be duly authorised, by the corporation or authority under which such pilot shall act, to continue in such business or employment;) or if any pilot licensed as aforesaid shall be convicted of any offence against any law or laws relating to the revenues of customs or excise, or shall be concerned in or

shall wilfully connive at any indirect practices or frauds against the revenues of customs or excise, or shall procure, abet, connive at, or participate in any destruction, spoil, concealment, fraud, exaction, or corrupt practice, relating to ships or vessels, or persons in distress at sea or by shipwreck, or relating to the tackle, apparel, or furniture, or the cargoes of such ships or vessels, or relating to the crew or passengers belonging thereto, or the monies, goods, or chattels of any of them; then and in every such case every pilot shall (over and above all other punishments, mulcts, and penalties for such offences,) be dismissed from being a pilot, or shall be suspended from acting as such, at the discretion of the corporation or other authority from which such pilot's licence was derived.

No pilot shall act until his licence has been registered; nor without having his licence in his custody, &c.

XLVI. And be it further enacted, That no person shall take charge of any vessel, or in any manner act as a pilot, or receive any compensation for acting as a pilot, unless he shall be authorised thereto by some lawful licence, nor until such licence shall have been registered by the principal officers of the custom-house of the place at or nearest to which such pilot shall reside (which officers are hereby required to register the same without fee or reward,) nor without having his licence at the time of his so acting in his personal custody, ready to be produced, and which he shall actually produce to the master of any ship or vessel, or other person who shall be desirous of employing him as a pilot; nor shall any person, although duly licensed to act as a pilot, act in that capacity out of or beyond the limits expressed in his licence, or beyond the extent of his qualification therein expressed, unless in the cases in this act specified, of pilots of a lower class acting in the absence of pilots of higher classes; on pain of forfeiting a sum not exceeding thirty pounds, nor less than ten pounds, for the first offence, and for any second or subsequent offence any sum not exceeding fifty pounds, nor less than thirty pounds.

On death of a pilot, his licence shall be returned to the corporation that granted it.

XLVII. And be it further enacted, That on the death of any pilot, his executors and administrators, or one of them, or the person or persons to whose hands the licence of such deceased pilot shall come, shall, without wilful delay, transmit such licence to the corporation, company, or persons by whom such licence was granted, on pain of forfeiting for any neglect therein, or for refusal to deliver the same when lawfully demanded, a sum not exceeding twenty pounds, nor less than forty shillings.

Corporations authorised to license vessels for having pilots in attendance at sea, &c.

XLVIII. And be it further enacted, That it shall be lawful for the said Corporation of Trinity House of Deptford Strond, and also for the said Society of Fellowship of Pilots of Dover, Deal, and the Isle of Thanet, and also for all other corporate bodies or other persons having lawful authority to appoint pilots within the limits of their respective jurisdictions, to license vessels of such size and description as shall appear to them to be proper for the purpose of having pilots constantly in attendance in such vessels at sea; and for the better support of such pilot vessels, it shall be lawful for any number of pilots licensed by virtue of this act, or otherwise lawfully licensed, with the consent of the said corporate bodies, or persons by whom respectively such pilots have been or shall be appointed as aforesaid, to constitute a joint stock company

or companies, for the providing and maintaining of such pilot vessels; which companies, and the said vessels, shall at all times be subject to such rules and regulations as shall from time to time be sanctioned and approved in that behalf by the said corporate bodies, or persons by whom respectively such pilots shall respectively have been licensed.

How pilot boats shall be fitted, and the name and number of the principal pilot painted thereon.

XLIX. And be it further enacted, That every pilot boat or vessel, or other boat or vessel in the pilot service of any corporation or society established by law in relation to pilotage, or of any persons authorised to act as a pilot by such corporation or society, shall at all times, and on every station, be fitted with black sides, and have the upper strake next the gunwale painted white, and shall while afloat carry a vane at the mast-head, or else a flag on a sprit or staff, or in some other equally conspicuous situation; which vane or flag shall be of large dimensions, proportioned to the size of the boat or vessel carrying the same, and shall be half red and half white, in horizontal stripes, of which the uppermost shall be white; and the same shall at all times be kept and preserved in a clean and distinct condition, so as to be easily discerned at a proper and sufficient distance; and every such boat or vessel shall also have the name of the principal pilot thereof for the time being painted in broad white letters, of three inches in length, on a black ground on her stern, and on each bow such number as shall be expressed in the licence of such principal pilot; which name and numbers shall not be hid or concealed by any person, at any time, on pain of forfeiting the sum of twenty pounds for such omission or evasion, to be paid by such principal pilot, who shall at all times be answerable for the due observance of the matters aforesaid, by every person on board such boat or vessel; and every other boat not in the service of any corporation or society, carrying off a pilot, shall exhibit a similar flag on a sprit or mast, to distinguish that she has a pilot on board.

Penalty for carrying such distinguishing flag, without having such pilot on board.

L. And be it further enacted, That if any boat or vessel, not having a licensed pilot on board, shall, without lawful authority, carry such distinguishing vane or flag as aforesaid, the owner or owners, or the master or other person having charge of such boat or vessel, displaying or carrying any such vane or flag, shall, for every such offence, forfeit and pay a sum of one hundred pounds.

Penalty on pilots declining to take charge of vessels, or exacting more than the allowed fee, &c.

LI. And be it further enacted, That every pilot licensed by virtue of this act, or otherwise duly licensed, who shall, when disengaged, or on any frivolous pretexts, decline to take charge of any ship or vessel, unless such cause shall be shewn by the pilot as shall justify his not taking charge of the ship; or who shall decline, on being required by any captain of any of His Majesty's ships, or by any officer of the society or fellowship to which such pilot shall belong, or the master or other person having the charge of any ship or vesssel, to come on board of any ship or vessel; or who shall decline, when required by any commissioned officer in His Majesty's navy, or by any principal officer of His Majesty's customs, or by any person or persons interested as principal or agent for or on behalf of any ship or vessel wanting a pilot, to go off to and take charge of any ship or vessel, when it shall be safe so to do; or who shall exact or demand or bargain for any greater

fee or reward, or any greater price or hire for pilotage, than such as are or shall be allowed by such rates or rules as are or shall hereafter be legally established in that behalf; or who shall in any wise delay going on board any such ship or vessel, or taking charge thereof when on board or alongside thereof; or who shall quit any such ship or vessel, or decline the piloting thereof after he has been engaged or after going alongside thereof, without leave of the captain of any of His Majesty's ships, or of the owner, master, captain, or person having the chief command of any ship or vessel, or before the service shall have been performed for which he was hired; or shall by drunkenness render himself incapable of conducting any ship or vessel, or shall negligently or wilfully run any vessel on shore, or lose the same, or do any injury to the same or to the tackle or furniture thereof; or who shall lend his licence to any unlicensed person, to enable or assist him towards acting or claiming to act as a licensed pilot; shall forfeit for every such offence any sum not exceeding one hundred pounds, nor less than ten pounds, and shall be liable to be dismissed from being, or suspended from acting as a pilot, at the discretion of the said Corporation of Trinity House of Deptford Strond, or at the discretion of such other corporate body, or person or persons, by whom such pilot was licensed.

Penalty on pilots for employing or requiring masters to employ any boat, &c. beyond what is necessary, thereby to increase expense.

LII. And be it further enacted, That in case any pilot, licensed by virtue of this act, shall employ or make use of, or shall compel or require any person having the command or charge of any ship or vessel, to employ or make use of any boat, anchor, cable, hawser, or any other matter or thing, in or for the service or pretended service of such ship or vessel, beyond what shall actually and *bonâ fide* be necessary and proper for the use thereof, with intent thereby to enhance or increase the charge or expense of pilotage, or pilot assistance of such ship or vessel, whether for the gain and emolument of such pilot, or for the gain or emolument of any other person or persons whomsoever; then and in every such case the person so offending shall forfeit and pay a sum not exceeding fifty pounds nor less than ten pounds, and shall also be liable to be deprived of his licence, or to be suspended from acting as a pilot for a limited time, at the discretion of the said Corporation of Trinity House of Deptford Strond, or other authority by which he is or shall be licensed.

Penalty for conducting any vessel into danger, or unnecessarily cutting cables, &c.

LIII. And be it further enacted, That in case any person licensed to act as a pilot by virtue of this act, or otherwise duly licensed, or any person not being a pilot, but acting under pretext or colour of pilotage, shall wilfully and knowingly conduct, lead, decoy or betray any ship or vessel into danger, in any manner not already provided against by any statute or statutes; or shall unnecessarily or improperly cut any cable or cables of or belonging to any ship or vessel, or cause or procure the same to be cut unnecessarily and improperly; or if any such person shall, by wilful misrepresentation of any circumstances upon which the safety of any ship or vessel shall appear materially to depend, for the time being, obtain, or endeavour to obtain the charge and conduct of any such ship or vessel; then and in every such case the person so offending, or who shall aid in, procure, abet, or connive at the committing

of any such offence or offences, shall forfeit and pay a sum not exceeding one hundred pounds, nor less than twenty pounds; and in case the person so offending shall be a pilot, he shall be either dismissed from being a pilot, or suspended from acting as such for a limited period, at the discretion of the corporation, or other authority by whom such pilot was licensed.

Pilot boat running before vessels not having a pilot on board, entitled to pilotage.

LIV. And be it further enacted, That if any such licensed pilot vessel or boat shall run before any ship or vessel not having a licensed pilot on board, for the purpose of directing the course of such ship or vessel, until a pilot can be put on board, the pilot on board such pilot vessel, or the person having charge of her, shall be entitled to the full pilotage for the distance run, until a duly licensed pilot shall be put on board, as if such person had been actually on board such ship, and had the charge of her as a pilot.

No pilot shall be taken to sea without his consent, except in case of necessity, and then shall receive half-a-guinea *per diem*.

LV. And be it further enacted, That no pilot shall be taken to sea by the commanding officer of any of His Majesty's ships, or by any master of any ship or vessel in the merchant service, without his free consent, except in case of absolute and unavoidable necessity; and in such case every pilot so taken to sea shall have and receive ten shillings and sixpence *per diem*, until he shall be returned to the port or place where he was taken on board, or until he shall have been discharged from the ship for a sufficient time to have enabled him to return there.

Surplus rates of pilotage on ships not having British registers shall be paid to receivers, and made a fund for relief of infirm pilots; and an account thereof shall be annually laid before parliament.

LVI. And whereas it is expedient that the surplus rates of pilotage, imposed by this act on ships not having British registers, should be applied for creating a fund for such pilots belonging to the Trinity House of Deptford Strond, and of the Fellowship of the Cinque Ports, as shall be superannuated; be it enacted, That all such excess of rates as aforesaid, which shall pertain to the establishment of the Trinity House, shall be paid to a receiver or receivers, to be appointed in that behalf by the said corporution, at some place or places convenient for the making of such payment, within the port of London, and shall be applied by the said corporation in the manner hereinafter directed; and if such extra rates of pilotage shall pertain to the establishment of the Cinque Ports, then the same shall be paid to a receiver or receivers, to be in that behalf appointed by the lord warden of the Court of Loadmanage, at some convenient place or places for the payment thereof, within the said port of London, and shall be applied by the said court in the manner hereinafter in that behalf directed; that is to say, in both cases to create a fund for the better support and maintenance of such pilots as shall become incapable of discharging their duty, from advanced age, or from any accident or permanent infirmity; to be applied and distributed in such manner, and under such rules and regulations, as the Corporation of the Trinity House of Deptford Strond, and the lord warden and the Court of Loadmanage of the Cinque Ports, shall respectively order and provide; of which receipts and appropriations the said corporations and courts respectively shall annually lay an account before Parliament within twenty days after the commencement of each session.

How pilotage of ships not foreign may be recovered.

LVII. And be it further enacted, That all sums of money which shall become due to any licensed pilot, for pilotage, shall and may be recovered from the owners or master of ships or vessels, or from

the consignees or agents thereof not being foreign ships or vessels, who shall have paid or made themselves liable to pay any other charge for the ship or vessel in the port of her delivery, and shall and may be levied in such and the like manner, according to the amount of any such sums of money respectively, as any penalty or penalties may be recovered and levied under and by virtue of this act, demand thereof being made in writing at least fourteen days before such levy.

How pilotage of foreign ships may be recovered.

LVIII. And be it further enacted, That the consignees or agents of all foreign ships and vessels, who shall have paid or engaged to pay any charge whatever in relation to such ship or vessel, shall be liable to the payment of, and shall pay all sums for pilotage due to the pilot or pilots who shall have piloted such ships or vessels, on proof being made within fourteen days after such pilotage shall have been performed, on the oath of such pilot before any justice of the peace, that the same has not been paid by the captain of such ship or vessel, if payment thereof shall be demanded from any such consignee or consignees within twenty-one days thereafter; and if any such sum or sums which shall so become due, and shall be so demanded as aforesaid, shall not thereupon be paid, then and in such case the sums of money so due for pilotage shall be recoverable in like manner as any penalty under the sum of twenty pounds may be recovered by virtue of this act; and such consignees or agents of foreign ships or vessels are hereby authorised and empowered to retain in their hands respectively, out of any monies which they may have received or shall thereafter receive for or on account of such foreign ship or vessel, or the owner or owners thereof, so much as shall be sufficient to pay and discharge such pilotage, and any expenses attending the same.

Consignees of foreign ships may retain pilotage.

Penalty on masters of vessels piloted by any other than a licensed pilot.

LIX. And be it further enacted, That the master of every ship or vessel which shall be piloted or conducted by any other person than a duly licensed pilot, within any limits for which pilots have been or shall be appointed by any lawful authority, shall forfeit double the amount of the sum which would have been demandable for the pilotage of such ship or vessel, and shall likewise forfeit an additional penalty of five pounds for every fifty tons' burthen of such ship or vessel, if the Corporation of Trinity House of Deptford Strond, as to cases in which pilots licensed by or under the said corporation shall be concerned, or the said lord warden for the time being, or his lieutenant for the time being, as to all cases in which the Cinque Port pilots shall be concerned, shall think it proper that the person prosecuting should be at liberty to proceed for the recovery of such additional penalty, and certify the same in writing: Provided always, that nothing in this act shall extend to subject to penalties any master of any ship or vessel (not anchoring within the limits of any port or place for which pilots are or shall be appointed) who shall act himself as pilot in passing up and down the English Channel, or elsewhere, in passing by any part of the coast of England, in the course of any voyage, or within the limits of the port or place to which his ship belongs not being a port or place in relation to which provision hath heretofore been made by any act or acts of parliament, or

Exception.

by any charter or charters for the appointment of pilots, or who shall employ any person as a pilot, or who shall act himself as such for the conduct of his ship or vessel, in any case where and so long as a duly qualified pilot shall not offer assistance or make a signal for that purpose: Provided also that this act shall not extend, or be construed to extend, to hinder any persons from assisting any ship or vessel in distress at any time or place, nor shall subject such persons, or any master of any ship or vessel employing such persons, to the penalties of this act, in respect of such assistance given during this distress of such ship or vessel, or in consequence thereof, or under any circumstances which shall have rendered it necessary for such master to avail himself of the best assistance which at the time could be procured; any thing herein contained to the contrary thereof in any wise notwithstanding.

Penalty for reporting to pilots a false account of the draught of water of vessels, or altering marks on vessels to denote such draught.

LX. And be it further enacted, That every person having the command or charge for the time being of any ship or vessel, who shall report or be privy or consenting to any other persons reporting to any pilot taking the charge of such ship or vessel, a false account of the draught of water of such ship or vessel, shall forfeit and pay for every such offence, in addition to the payment of the full rate of pilotage to the pilot entitled thereto, double the amount of such pilotage; and any person having the command or charge for the time being of any ship or vessel, or having any interest, share, or property therein, who shall fraudulently alter any marks on the stem or sternpost thereof, denoting the draught of water, or shall be privy to and consenting thereto, shall for any such offence forfeit and pay the sum of five hundred pounds.

How controversies respecting the draught of water of vessels shall be settled.

LXI. And in order to prevent or settle controversies concerning the draught of water of ships and vessels which shall be from time to time on the river Thames (not having British registers;) be it further enacted, That whenever any difference about the draught of water of any ship or vessel shall arise between the master or other person having the command of any such ship or vessel, and any person who shall have piloted the same into the said river, or who shall be required to pilot the same therefrom pursuant to the directions of this act, the said corporation of Trinity House, or some proper officer or person appointed by them, shall admeasure the draught of water of such ship or vessel, and shall settle and determine the same between the parties, upon application made by either of them to the said corporation within twelve hours after such ship or vessel shall have arrived at her moorings in the river, or before the cargo thereof shall be begun to be unladen, or before such ship or vessel shall quit her moorings on any outward voyage; for which admeasurement the officer or person making the same shall be paid one guinea if the ship or vessel shall be below or in the Pool, and half-a-guinea if above the Pool, by the person requiring such admeasurment, or making application for the same to the said corporation.

Names of pilots to be inserted in the report of ships coming into the port of

LXII. And be it further enacted, That every master or other person having the command for the time being of any ship or vessel required to be piloted according to the directions of this act, shall, on coming into the port of London, and in making the entry

or report of his ship or vessel inwards, insert, or cause to be inserted, in such entry or report, the name of the pilot or pilots employed or engaged by him or by the owner of such ship or vessel to pilot the same into the said port of London; and which insertion shall be made (without fee or reward) by the proper officer of the customs in the said entry or report, who shall also report the same to the Corporation of the Trinity House monthly; and also that the principal searcher or clearing officer of the customs at Gravesend shall demand and take the name or names of the pilot or pilots of all ships or vessels clearing outwards from the port of London, and shall transmit monthly lists of such names to the said Corporation of the Trinity House, on pain of forfeiting a sum not exceeding ten pounds, nor less than five pounds, to be paid by every person who shall neglect to comply with the foregoing regulations respectively.

London, and reported monthly to the Trinity House.

Like reports to be made of vessels clearing outwards.

LXIII. And be it further enacted, that the master of every ship or vessel, not having a British register, who shall not furnish or give the name of the pilot or pilots who shall have been employed to pilot his ship or vessel into the port of London shall be deemed to have sailed and been navigated into the said port without a pilot, and shall be liable to pay the same or the like pilotage for such his ship or vessel, for and in respect of the distance which he shall or may have navigated and sailed up the river Thames, or the channels leading thereto without a pilot, as he would have been liable to pay if a pilot had been employed by him; and the same shall be paid to the collector appointed by the Corporation of Trinity House, and shall go toward the fund by this act established in relation to the surplus rates of pilotage: provided nevertheless, that in all cases where due proof shall be made to the Corporation of the Trinity House, at any time within three months after any such payment, that a pilot was in any such case regularly and duly employed and paid, then and in any such case the sum or sums of money which shall have been so paid, shall be returned to the person or persons who shall have paid the same, or any other person or persons by him or them duly authorised and empowered to receive the same.

Masters of foreign ships not giving the name of pilot, shall be deemed to have sailed without one, and shall pay pilotage.

LXIV. And be it further enacted, that lists of the Christian and surnames, ages and places of residence, of all pilots in England, shall, with the dates of their appointments, on or before the 31st day of December, 1812, be transmitted to the Corporation of Trinity House of Deptford Strond, at their court-house in London, distinguishing the limits within which such pilots are appointed to act respectively, and thenceforward from time to time as each appointment of a pilot shall take place, and also duplicates of such lists to the commissioners of the customs in England, annexing to the lists to be transmitted to the Trinity House the rates of pilotage, and also stating the rules and regulations made and established in relation to such pilots, in case such rules and regulations shall have been made by any other authority than by act of parliament, or by the said Corporation of Trinity House of Deptford Strond; and the same, when so completed, shall be transmitted as aforesaid by the respective bodies politic and corporate, and other persons authorised to appoint pilots in any of the ports, harbours,

List of pilots to be transmitted to the Trinity House and the commissioners of customs.

or rivers, or on any of the coasts of England, by whom such pilots shall have been appointed respectively; and the said bodies politic and corporate, and other persons authorised to appoint pilots as aforesaid, shall, and they are hereby required to transmit to the said corporation of Trinity House, at their said court-house in London, annually, on the 31st day of December, or within one calendar month afterwards, a list corrected up to the said 31st day of December annually, of the names and residences of the pilots within their several jurisdictions, and stating such alterations as may have been made (if any) in the rules and regulations for governing pilots within the respective districts.

Commissioners of customs to transmit to their principal officers at the several ports in England the names, &c. of pilots residing within the limits of each port.

LXV. And whereas by two acts passed in the forty-fifth and forty-sixth years of his present Majesty, for the more effectual performance of quarantine, pilots are required, on going on board ships arriving from foreign parts, in certain cases, to give information to the commanders thereof respecting proclamations and orders in council relative to the performance of quarantine, which renders it necessary that notice of such proclamations and orders which may have been issued subsequent to the departure from England of such ships should be previously communicated to all pilots throughout England; be it further enacted, that the said commissioners of the customs shall, within one month from the 31st day of December 1812, transmit to the principal officers of the revenue under their management at the several ports in England, the names and places of residence of such pilots, in the lists so transmitted to them, as shall reside within the limits of each port respectively, and so from thenceforward the name of each pilot of whose nomination they shall receive notice from the proper authority, in order that the said principal officers at the several ports may be enabled to communicate to every pilot within the limits of the ports respectively all proclamations or orders in council respecting the performance of quarantine by ships arriving from infected places, which the said officers are hereby required to do.

All acts relating to the regulation of pilots extended to this act.

LXVI. And be it further enacted, that all acts of parliament, and all clauses, provisions, powers, authorities, regulations, penalties, and forfeitures contained in any act which in any manner relate to the regulation of pilots or pilotage within any river, port, or harbour, or within any local limits specified in any such act, clause, or provision, and in which any reference is made to the said act of the forty-eighth year aforesaid, or in any manner apply thereto, or vary or alter any of the provisions thereof as to pilots or pilotage within any such limits, shall continue in full force, notwithstanding the repeal of the said act of the forty-eighth year aforesaid, and be deemed to refer and apply to this act, and shall be so construed as if the same were particularly referred to in this act; any thing in this act to the contrary notwithstanding.

Provisions of former acts for preservation of beacons shall extend to all vessels appointed to exhibit lights, &c.

LXVII. And be it further enacted, that all the provisions, clauses, penalties, and forfeitures, contained in an act passed in the eighth year of the reign of Queen Elizabeth, or any other act or acts made and in force for the preservation of beacons and sea-marks, shall extend and be construed to extend to all vessels duly appointed to exhibit lights therein for the preservation of ships and vessels at sea, and to all persons removing, injuring, or de-

stroying such vessels or lights; which offences may be laid or tried in any county in England.

Penalty for riding by, &c. such vessels, or any buoy or beacon.

LXVIII. And be it further enacted, that every person who shall ride by, make fast to, or remove, or wilfully or negligently run down or run foul of any vessel appointed or placed to exhibit lights, or any buoy or beacon belonging to the said Corporation of Trinity House of Deptford Strond, or belonging to or placed by any other corporation having lawful authority to place the same, shall forfeit for every such offence any sum not exceeding fifty pounds nor less than ten pounds, together with the expence of replacing or making good any damage occasioned by such misconduct.

Penalty on pilots for not obeying the orders of the dock master of the West India dock company.

LXIX. And whereas by an act passed in the thirty-ninth year of the reign of his present Majesty, intituled An Act for rendering more commodious, and for better regulating, the port of London, the dock master or dock masters appointed by the West India dock company, under and by virtue of the said act, have full power and authority to direct the mooring, unmooring, moving or removing, of all ships and other vessels, lighters and craft, as shall be within the distance of two hundred yards from any entrance out of the said river there into the works of the said company, as to the time or times and manner of their entrance into, lying in, or going out of or from the same: And whereas the powers given to the said dock master or dock masters, under and by virtue of the said recited act, have not been found sufficient to enable him and them to enforce obedience to his and their orders and directions to pilots having the charge or direction of navigating ships and vessels within the aforesaid distance of two hundred yards of the respective entrances into the said docks from the river Thames; be it therefore enacted, that from after the passing of this act, if any pilot or pilots having the charge or direction of navigating any ship or vessel within the aforesaid distance of two hundred yards from the respective entrances into the said docks from the river Thames, and either intended to go into, or having recently come out of the docks, basons, or other works of the said company, shall neglect or refuse to obey such orders or directions as shall or may from time to time be given to such pilot or pilots, by the said dock master or dock masters, under and by virtue of and agreeably to the powers vested in him and them by the said recited act, touching or relating to the mooring, unmooring, moving, or removing, of such ships or vessels so being under the charge or direction of such pilot or pilots as aforesaid; then and in every such case every pilot so offending shall forfeit and pay a sum not exceeding fifty pounds, nor less than twenty pounds; and every such pilot shall be liable to be dismissed from being a pilot, or suspended from acting as such, at the discretion of the corporation, or other authority by whom such pilot was licensed.

List of vessels employed for pilotage, with the number of hands, to be annually transmitted to the receiver of the six-penny duty

LXX. And be it further enacted, that the Corporation of the Trinity House of Deptford Strond, and the court of loadmanage of the Cinque ports, and all other Corporations for managing or directing pilots in any part of England, under the authority of any act of parliament or charter, shall annually, within one month after the 1st day of January in every year, transmit to the office of the receiver of the six-penny duty in the port of London, a

In the port of London.

list of all the vessels of every description employed by them or by persons under their authority for the purposes of pilotage, with the number of men and boys belonging to or serving in any such vessel.

How penalties not exceeding twenty pounds may be recovered.

LXXI. And be it further enacted, that all fines, penalties, and forfeitures, which are by this act imposed, or which shall be imposed by any bye law made under the authority thereof, the manner of levying whereof is not herein otherwise expressly directed, which shall not exceed twenty pounds, or in respect of which the party prosecuting shall proceed for any sum not exceeding twenty pounds, which in all cases it shall be lawful for him to do, with the consent of the Corporation of Trinity House of Deptford Strond, or of the said lord warden for the time being, or his lieutenant for the time being, in the cases in this act before mentioned, notwithstanding a greater penalty might otherwise be recoverable, may be levied and recovered within six calendar months after the offence or offences committed, or within such other time as is hereinafter in that behalf directed, before any justice or justices of the peace for the county, city, division, or place, where the offence or offences shall be committed; or if committed by any pilot, before any justice of the peace or magistrate of the city, town, or port, to which such pilot shall belong; or if committed by any owner or master of any ship or vessel, by any justice of the peace or magistrate of the county, city, town, or port, at which such owner or master shall reside, or to which the ship of such owner or master shall belong; or if committed by any pilot of the Trinity House of Deptford Strond, or of the Cinque ports, or by any other person, on any part of the sea from Orfordness to the mouth of the river Thames, or from Dungeness to the mouth of the river Thames, or upon the rivers Thames or Medway, then by any justice of the peace of the counties of Kent, Surrey, Essex, or Middlesex, or by any magistrate of the city of London; and such justice and justices is and are hereby empowered and required, upon complaint to him or them made, to grant a warrant to bring before him or them such offender or offenders, at the time or place in such warrant specified; and if on conviction of the offender or offenders respectively, on his, her, or their confession, or on the evidence of any one or more credible witness or witnesses upon oath (which oath such justice or justices is and are hereby empowered to administer) such fine, penalty, or forfeiture, shall not be forthwith paid, it shall and may be lawful to and for such justice or justices to commit every such offender to the common gaol or house of correction for the county, city, or place where such offender shall be convicted, there to remain without bail or mainprize for any time not exceeding six calendar months, nor less than twenty-one days, unless such fine, penalty, or forfeiture, and all reasonable charges attending the recovery thereof, shall be sooner paid.

How penalties above twenty pounds may be recovered.

LXXII. And be it further enacted, that all fines, penalties, or forfeitures, exceeding the sum of twenty pounds, by this act imposed for any offence or offences committed against this act, or in which the lowest penalty being less than twenty pounds, a greater sum may be awarded than twenty pounds, and in which the party prosecuting such offence shall, with the consent of the Corporation

of Trinity House of Deptford Strond, or of the said lord warden for the time being, or his lieutenant for the time being, in the cases in this act before mentioned, proceed for any greater sum than twenty pounds, shall and may be recovered, with full costs of suit, by action of debt, bill, plaint, or information, in any of His Majesty's Courts of Record at Westminster, wherein no essoign, protection, wager of Law, or any more than one imparlance shall be allowed, within twelve calendar months next after the offence or offences shall be committed, or within such other time as is hereinafter in that behalf directed; and in any such case or cases it shall be lawful to sue for the full penalty or penalties, and it shall also be lawful for the jury giving the verdict to award any sum, not less than the sum specified as the lowest penalty, nor greater than the sum specified as the highest penalty, for the offence for which the action, bill, plaint, or information, is or shall be brought: Provided always, that in case the said respective periods of six calendar months, and twelve calendar months, or either of them, within which fines, penalties, or forfeitures, are to be sued for as aforesaid, shall in any case or cases elapse and run out before any prosecution hereby authorised and directed shall have been commenced for the recovery of such fines, penalties, or forfeitures; and if it shall in manner herein-after mentioned be made to appear, as soon after as the circumstances of the case shall reasonably admit, that the commencement of the prosecution has been delayed by the reason of the absence of any party or parties, whether offending or complaining, or by the absence of any necessary witness or witnesses; then upon such circumstances being stated by affidavit in writing, made before any judge of any of His Majesty's Courts of Record at Westminster, it shall thereupon be lawful for any such judge or judges to order or authorise the commencement of such prosecution within such further time as such judge shall think fit to limit in that behalf; and in such case the prosecution or prosecutions so ordered or authorized shall and may be commenced and prosecuted within the time or respective times so limited, in like manner and with the like effect in all respects as if such prosecutions had been commenced and prosecuted within the said respective periods of six months and twelve months hereby limited.

Act not to affect the jurisdiction of the Court of Loadmanage, or of the High Court of Admiralty.

LXXIII. Provided always, and be it further enacted, that nothing herein contained shall extend to affect or impede the jurisdiction of the Court of Loadmanage, as far as respects the pilots appointed under the authority of the said Court; and provided also, that nothing in this act contained shall extend, or be construed to extend, to affect or impair the jurisdiction of the High Court of Admiralty.

Justice of any county into which an offender shall escape, may indorse the original warrant, which shall authorise the peace officers to execute it, &c.

LXXIV. And be it further enacted, that in case any person against whom a warrant shall be issued by any justice or justices, before or after any conviction for any offence against this act, shall escape, go into, or reside or be in any other county, riding, division, city, liberty, town, or place, not within the jurisdiction of the justice or justices granting such warrant or warrants, it shall be lawful for any justice of the peace of the county, riding, division, city, liberty, town, or place, into which such person shall escape,

either before or after conviction, and they and every of them are hereby required, upon proof made upon oath of the hand-writing of any justice or justices granting such warrant or warrants, to indorse his or their name or names on such warrant; and the same, when so indorsed, shall be sufficient authority to all peace officers to execute such warrant in such other county, riding, division, city, town, or place, out of the jurisdiction of the justice or justices granting the said warrant; and any justice or justices respectively, on the offender or offenders being apprehended and brought before him or them within their respective jurisdictions, may proceed to hear and determine the complaint, in the same manner as if it had originally arisen within his or their respective jurisdictions, and may direct the offender or offenders to be carried to the justice or justices who granted the original warrant, to be dealt with according to law.

Application of penalties.

LXXV. And be it further enacted, that one-third of all fines or penalties to be levied in pursuance of this act, or under any bye law made in pursuance thereof, by whomsoever incurred, shall go to the person who shall inform or sue for the same, and the remainder of all such fines or penalties shall be paid and applied to the fund of the Trinity House at Deptford Strond, and shall be applied, after defraying thereout the expences of carrying this act into execution, in such manner, and for the like purposes, as the other funds of the said Corporation are by law or usage applicable, in case such fines or penalties shall be incurred by pilots licensed by the said Corporation, or by any other person or persons, in relation to any matters wherein such last-mentioned pilots shall be in any wise concerned; and in case such fines or penalties shall be incurred by pilots of the cinque ports, or by pilots under any other jurisdiction or authority, or by any other person or persons, in relation to any matters wherein pilots shall be in anywise concerned, then the remaining two-thirds of such last-mentioned fines or penalties shall go to such fund as hath been, or shall be established by the persons having the direction of the cinque port or other pilots, and shall be applied to the use of such respective funds, after defraying out of such funds and penalties the respective expences incurred in carrying this act into execution.

Witnesses not appearing, may be committed to the House of Correction.

LXXVI. And be it further enacted, that if any person, who shall be summoned as a witness before any justice or justices of the peace, shall refuse or neglect to appear at the time by such summons appointed having no just cause for such neglect or refusal, it shall be lawful for such justice or justices, on proof of such summons having been served, and of a tender of reasonable expences having been made to such person on his being served with such summons, to issue his or their warrant, under his hand and seal, or their hands and seals, to bring such person before him or them; and if on appearance, or on being brought before any justice or justices, such person shall refuse to be examined on oath concerning the premises, without having some just cause for such refusal, it shall be lawful for such justice or justices, by warrant under his hand and seal, or their hands and seals, to commit such person to the House of Correction of the county, city, division, or place, where any such person shall be apprehended, there to remain

for any time not exceeding six months, nor less than fourteen days, as any such justice or justices shall direct.

Persons convicted of giving false testimony, guilty of perjury.

LXXVII. And be it further enacted, that every person who, in any examination upon oath under the provisions of this act, shall wilfully give false testimony, or a false account of the matter sworn to by him, shall be liable to be prosecuted for the same by indictment; and, if duly convicted of false swearing in the premises, shall be subject and liable to such punishments, disqualifications, and disabilities, as any person would be subject or liable to for wilful and corrupt perjury in any other case by the laws and statutes of the realm.

Convictions may be drawn up in the following form.

LXXVIII. And, for the more easy and speedy conviction of offenders against this act, be it further enacted, that all and every justice and justices of the peace, before whom any person shall be convicted of any offence against this act, shall and may cause the conviction to be drawn up according to the following form, or in words to the like effect, *videlicet:*

"Be it remembered, that on the day of in the year of our Lord *A. B.* is convicted before me [*or*, us] one [*or*, two, *as the case may be*] of His Majesty's justices of the peace for the [*here specify the offence, and the time and place when and where committed, as the case may be*] contrary to an act, passed in the fifty-second year of the reign of King *George* the Third, intituled [*here insert the title of this act*] and I [*or*, we] do adjudge, that he hath therefore forfeited the sum of [*here insert the penalty.*] Given under my hand and seal [*or*, our hands and seals,] the day and year first above written."

And no *certiorari*, or other writ or process for the removal of any such conviction, or any proceedings thereon, into any of His Majesty's Courts of Record at Westminster, shall be allowed or granted.

Appeal may be made to the quarter sessions, who may finally determine the matter, and award costs.

LXXIX. And be it further enacted, that it shall and may be lawful to and for any person or persons so convicted by any justice or justices of the peace before mentioned, of any offence or offences against this act, or against any rule, order or bye law made in pursuance thereof, within three calendar months next after such conviction, to appeal to the justices of the peace assembled at the general quarter sessions holden for the county, city or place where the matter of appeal shall arise, first giving ten days' notice of such appeal to the person or persons appealed against and of the matter thereof, and within fourteen days next after such notice entering into a recognizance before some justice of the peace for such county, city or place, with sufficient sureties conditioned to try such appeal, and for abiding the determination of the Court therein; and such justices shall, upon due proof of such notice having been given and recognizance entered into, hear and determine the matter of such appeal, and may either confirm or quash and annul the said conviction, and award such costs to either party, as to them shall seem just and reasonable; and the decision of the said justices therein shall be final, binding, and conclusive; and no proceeding to be had or taken in pursuance of

Proceedings not to be quashed for want of form,

or removed by certiorari. this act, shall be quashed or vacated for want of form only, or be removed by *certiorari*, or any other writ or process whatsoever, into any of His Majesty's Courts of Record at Westminster or elsewhere; any law or statute to the contrary thereof in any wise notwithstanding.

Limitation of actions. LXXX. And be it further enacted, that if any suit or action shall be brought or prosecuted against any person or persons for any thing done or to be done in pursuance of this act, in every such case the action or suit shall be commenced within six calendar months next after the fact committed, and not afterwards, and shall be laid or brought in the county, city or place, where the cause of action arises, and not elsewhere; and the defendant or General issue. defendants in such action or suit may plead the general issue not guilty, and give this act and the special matter in evidence at any trial to be had thereupon, and that the same was done in pursuance and by the authority of this act; and if it shall appear so to be done, or if any such action or suit shall be brought after the time limited for bringing the same, then the jury shall find for the defendant or defendants; or if the plaintiff or plaintiffs shall become nonsuited, or suffer a discontinuance of his, her, or their action or actions, or if a verdict shall pass against the plaintiff or plaintiffs, or if upon demurrer judgment shall be given against the plaintiff or plaintiffs, the defendant or defendants shall have treble Treble costs. costs, and shall have such remedy for the same as any defendant or defendants hath or have for costs of suit in other cases by law.

Act not to prejudice any right of the city of London. LXXXI. Provided always, and it is hereby further enacted and declared, that nothing in this act contained shall extend, or be construed to extend, to prejudice or take away any right, property, authority or jurisdiction of the mayor of the city of London, or of the mayor and commonalty and citizens of the city of London, to, in, and upon the River Thames aforesaid.

Public act. LXXXII. And be it further enacted, that this act shall be deemed and taken to be a public act, and shall be judicially taken notice of as such by all judges, justices and others, without being specially pleaded.

Act may be altered or repealed this session. LXXXIII. And be it further enacted, that this act may be altered, amended, or repealed, by any act or acts to be passed in this present session of parliament.

SCHEDULES to wh

Sched

TABLE of the RATES of PILOTAGE for piloting Ships from the River to the Do of the Thames to London,

FROM	TO	7 Feet and under.			8 Feet.			9 Feet,			10 Feet.			11 Feet.			12 F	
		£.	s.	d.	£.	s.	d.	£.	s.	d	£.	s.	d.	£.	s.	d.	£.	s.
The Sea, Ordfordness, the Downs, Hosely Bay, and *vice versa*	Nore or Warps .	4	0	0	4	10	0	5	0	0	5	10	0	5	15	0	6	1
	Gravesend, Chatham, Standgate Creek, or Blackstakes .	5	0	0	5	17	0	6	14	0	7	10	0	8	5	0	9	
	Longreach . .	5	5	0	6	2	0	6	19		7	15	0	8	12	0	9	1
	Woolwich or Blackwall .	5	15	0	6	12	0	7	9		8	5	0	9	5	0	10	
	Moorings or London Docks	6	6	0	7	1	0	7	16		8	11	0	9	15	0	10	1
The Nore or Warp, or thereabouts, and *vice versa*	Gravesend, Standgate Creek, or Blackstakes	2	2	0	2	7	0	2	11	0	2	15	0	3	5	0	3	1
	Longreach or Chatham .	2	10	0	2	15	0	3	0	0	3	5	0	3	15	0	4	
	Woolwich or Blackwall	3	0	0	3	7	0	3	14	0	4	0	0	4	10	0	4	1
	Moorings or London Docks	3	10	0	3	17	0	4	4	0	4	10	0	5	5	0	5	1
Gravesend Reach, and *vice versa*	Longreach . .	0	10	0	0	16	0	1	2	0	1	7	6	1	12	6	1	1
	Woolwich or Blackwall .	1	5	0	1	10	0	1	15	0	2	0	0	2	8	0	2	1
	Moorings or London Docks	1	10	0	1	17	0	2	4	0	2	10	0	3	0	0	3	1
	Sheerness or Blackstakes .	3	0	0	3	4	0	3	7	0	3	10	0	4	0	0	4	1
	Chatham . .	3	10	0	3	14	0	3	17	0	4	0	0	4	10	0	5	
Longreach, and *vice versa* . .	Woolwich or Blackwall .	1	0	0	1	4	0	1	7	0	1	10	0	2	0	0	2	1
	Moorings or London Docks	1	10	0	1	14	0	1	17	0	2	0	0	2	10	0	3	
	Sheerness or Blackstakes .	3	10	0	3	14	0	3	17	0	4	0	0	4	10	0	5	
	Chatham . .	4	0	0	4	4	0	4	7	0	4	10	0	5	0	0	5	1
Woolwich or Blackwall, and *vice versa*	Moorings or London Docks	1	0	0	1	4	0	1	7	0	1	10	0	1	12	6	1	1
	Sheerness or Blackstakes .	4	0	0	4	4	0	4	7	0	4	10	0	5	0	0	5	1
	Chatham . .	4	10	0	4	14	0	4	17	0	5	0	0	5	10	0	6	

Ships not having British Registers are to pay One-fourth more of the Rates of Pilotage than stated in the al

For Half a Foot exceeding the above Draughts of W

For intermediate Distances a proportionate Rate.

For removing a Ship or Ve[illegible] from Moor

For a Ship un[illegible]00 Tons

300 to 600 .

600 to 1,000

above 1,000

In the River Thames above Gravesend { For a Boat of a Class carrying an Anchor of above 4
. . Do. . with an Anchor above 2 cwt.
. . Do. . with an Anchor under 2 cwt.

And for each Man's Service in th

ıis Act refer's.

(A.)

ıl up and down the North Channel, from and to Hosely Bay; or from or off the Entrance Sea from the River.

Feet.		14 Feet.			15 Feet.			16 Feet.			17 Feet			18 Feet			19 Feet			20 Feet.			21 Feet.			22 Feet.			23 Feet and upwards		
s.	d.	£.	s.	d.	£.	s.	d.	£.	s.	d.	£.	s.	d.	£.	s.	d.	£.	s.	d.	£.	s.	d.	£.	s.	d.	£.	s.	d.	£.	s.	d.
5	0	8	0	0	8	10	0	9	10	0	10	5	0	11	16	0	12	10	0	14	0	0	15	10	0	18	0	0	20	0	0
15	0	10	10	0	11	5	0	12	0	0	12	15	0	15	6	0	18	2	0	21	0	0	23	2	0	25	4	0	27	6	0
5	0	10	17	6	11	15	0	12	10	0	14	6	6	16	16	0	20	4	0	23	2	0	25	0	0	27	0	0	29	0	0
0	0	12	0	0	12	15	0	13	10	0	15	8	0	17	14	0	21	5	0	24	0	0	27	0	0	30	0	0			
10	0	12	10	0	13	10	0	14	5	0	16	0	0	18	10	0	22	6	0	25	5	0									
18	0	4	2	0	4	10	0	4	18	0	5	10	0	6	6	0	7	0	0	8	8	0	9	9	0	10	10	0	11	11	0
10	0	4	14	6	5	2	0	5	14	0	6	6	0	7	7	0	9	0	0	10	10	0	11	11	0	12	12	0	13	13	0
7	6	5	18	0	6	6	0	6	15	0	7	15	0	8	18	0	10	0	0	12	12	0	13	13	0	15	0	0			
5	0	6	15	0	7	5	0	7	15	0	8	15	0	10	0	0	12	0	0	14	0	0	15	0	0						
2	6	2	7	6	2	12	6	2	17	6	3	2	6	3	7	6	3	12	6	3	17	6	5	0	0	6	0	0			
8	0	3	18	0	4	5	0	4	13	0	5	2	0	5	10	0	6	15	0	8	5	0	9	15	0	10	10	0			
0	0	4	10	0	5	0	0	5	10	0	6	0	0	6	10	0	8	0	0	9	10	0									
0	0	5	10	0	6	0	0	6	10	0	7	0	0	7	10	0	8	0	0	8	10	0									
10	0	6	0	0	6	10	0	7	0	0	7	10	0	8	0	0	8	10	0	9	0	0									
0	0	3	10	0	4	0	0	4	10	0	5	0	0	5	12	6	6	6	0	7	0	0	9	0	0	10	0	0			
10	0	4	0	0	4	10	0	5	0	0	5	12	6	6	6	0	7	0	0	8	0	0	10	0	0						
10	0	6	0	0	6	10	0	7	0	0	7	10	0	8	0	0	8	10	0	9	0	0	9	10	0						
0	0	6	10	0	7	0	0	7	10	0	8	0	0	8	10	0	9	0	0	9	10	0	10	0	0						
0	0	2	5	0	2	10	0	2	15	0	3	0	0	3	5	0	3	10	0	3	15	0									
0	0	6	10	0	7	0	0	7	10	0	8	0	0	8	10	0	9	0	0	9	10	0									
10	0	7	0	0	7	10	0	8	0	0	8	10	0	9	0	0	9	10	0	0	0	0									

le, (except chiefly laden with Corn or other Provisions) and which is to be paid at the Custom House.

Medium Price between the Two Limits.

a Dry or We[illegible]ock :

£0 15

1 1

1 11 6

2 2 0

a corresponding Tow Line, the Rate £2 2 0 } Per Trip for the whole distance from Gravesend
'esponding Tow Line, — 1 11 6 } to London; and in proportion for any part
— 1 1 0 } of that distance.

ls, 10*s.* 6*d.* per Tide.

SCHEDU

A TABLE of the respective Rates to be received by the Pilots of the Cin

FROM	TO	Under 7 Feet.	From 7 Feet to 10 Feet.	11 Feet	12 Feet.	13
		£. s. d.	£. s. d.	£. s. d.	£. s. d.	£.
The Downs . .	Nore, Sheerness, Standgate Creek, Gravesend	5 5 0	7 17 6	8 13 3	9 9 0	10
	Longreach	5 16 0	8 8 6	9 9 0	10 4 9	11
	Blackwall or London . .	6 12 3	8 19 6	10 4 9	11 0 6	12
Standgate Creek . .	Gravesend	3 6 2	3 17 0	4 8 2	4 19 0	5 1

For every Half Foot exceeding 10 Feet of the above Draughts of \

For intermediate Distances a proportionate Rate equal to Half the E

Ships and Vessels which shall be boarded by Pilots V

For putting a Pilot on board, and for Pilotage to the Anchorage in the Downs.
1. From off Dungeness to the Downs .
2. From the Westward of Folkstone to the Dowı
3. From the Westward of Dover to the Downs, the South Pier Head on with the Citadel
4. From off Dover and Westward of the South l
5. From off the South Foreland, and to the No or for coming on board when at anchor thei

Ships not having British Registers, to pay One-fourth more of the Rates of Pilotage than is stated in thi added £10 *per cent.* when the number of Cinque Port Pilots shall be increased to 160, and £20 *per cen* the Cinque Ports, or by his authority, in the London Gazette, and in one or more newspapers circulati

In the River above Gravesend.
For a Boat of a Class carrying an Anchor above 4 cwt.
Ditto . . with an Anchor above 2 c
Ditto . . with an Anchor under 2 cv
And for each Man's service in those Boats, 10*s.* 6*d.* p

3.)

rt Establishment, according to the Regulations established by this Act.

14 Feet.	15 Feet.	16 Feet.	17 Feet.	18 Feet.	19 Feet.	20 Feet.	21 Feet.	22 Feet.	23 Feet and upwards
£ s. d.	£. s. d.	£. s. d.	£. s. d.	£. s. d.	£. s. d.	£. s. d.	£. s. d.	£. s. d.	£. s. d.
11 0 6	11 16 3	12 12 0	13 7 9	16 1 3	19 0 0	22 1 0	24 5 0	26 9 2	28 13 3
11 18 10	12 18 3	13 14 0	15 0 9	17 14 4	21 4 2	24 5 1	26 9 2	28 13 3	30 17 4
12 17 3	14 0 4	14 16 0	16 13 9	19 7 5	23 8 3	26 9 2	28 13 3	—	—
6 1 3	6 12 3	7 3 3	7 14 4	8 5 4	8 16 4	9 7 4	—	—	—

creased Rate, equal to the medium between the two limits is to be paid.

tween the two limits.

the Downs are to pay the several Rates following:

	£.	s.	d.
. . . .	5	5	0
. . . .	4	4	0
be deemed West of Dover until she shall have passed the Flag Staffs on stern Redoubt on the Heights.	3	3	0
the Downs	2	2	0
that Promontory to the Anchorage in the Downs, ...	1	1	0

cept such as are chiefly laden with Corn or other Provisions. To all the several Rates above-mentioned shall be ey shall be increased to 180; of which increased Numbers respectively notice shall be given by the Lord Warden of ounties of Middlesex and Kent.

	£.	s.	d.	
rresponding Tow Line, the Rate .	2	2	0	Per Trip for the whole Distance from Gravesend to London, and in Proportion for any Part of this Distance.
rresponding Tow Line . . .	1	11	6	
. . . .	1	1	0	

SCHEDULE (C.)

Oath to be taken by the Master and Wardens of the Society of the Cinque Port Pilots.

I, *A. B.* do swear, that I will diligently and impartially examine and inquire into the capacity and skill of in the art of piloting ships and vessels over the flats, and round the Long Sand Head, and up the Rivers of Thames and Medway, and into Ramsgate, Dover, Sandwich, and Margate harbours; and also upon the coasts of Flanders and Holland; and will make true and speedy return thereof to the lord warden of the cinque ports for the time being, or his deputy, without favour, affection, fee or reward. So help me GOD.



SCHEDULE (D.)

Oath to be taken by Sub-Commissioners for Pilotage.

I *A. B.* do swear, that I will diligently and impartially examine into the capacity and skill of in the art of piloting ships and vessels into the Roadstead, port, or harbour, and upon the coast following, *videlicet,* [*here describe the limits within which the person examined is intended to act as a pilot*] and will make true and speedy return thereof to the Corporation of Trinity House of Deptford Strond, without favour, affection, fee or reward, other than such fee or reward as is allowed by the bye laws or re[illegible]tions duly established in that behalf. So help me [illegible]

53 Geo. III. c. 140.

An Act to amend an Act passed in the last Session of Parliament, intituled An Act for the more effectual Regulation of Pilots, and of the Pilotage of Ships and Vessels, on the Coast of England, and for the Regulation of Boatmen employed in supplying Vessels with Pilots, licensed under the said Act, so far as relates to the Coast of Kent within the Limits of the Cinque Ports.—[13th *July*, 1813.]

WHEREAS an act passed in the fifty-second year of the reign of his present Majesty, intituled An Act for the more effectual Regulation of Pilots, and of the Pilotage of Ships and Vessels, on the Coast of England: And whereas it is necessary for the ensuring a proper supply of pilots under the s[illegible] for vessels passing Dover, and through the Downs, to and fr[illegible] river Thames and other places, that further provisions should be made for the licensing and regulation of boatmen usually employed in putting pilots on board of vessels from Dover, Deal, and Ramsgate and Margate: May it therefore please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, that one hundred and forty boatmen shall be licensed by the lord warden of the cinque ports, or by his lieutenant, or by the deputy lieutenant-governor of Dover castle, or such other person or persons as shall be from time to time specially authorised by the lord warden for that purpose within the jurisdiction of the cinque ports, for the purpose of assisting ships in distress, and conducting them into and out of the harbours of Dover, Ramsgate, Margate, and Folkstone, and putting licensed cinque port pilots on board of ships and vessels coming from the westward and bound up the River of Thames and Medway; and fifty of such boatmen shall constantly reside at Dover, fifty at Deal, twenty at Ramsgate, and twenty at Margate; and all such boatmen shall be respectively required by such licences so to reside at the respective places to be specified in their licences, and shall, upon quitting their places of residence, or neglecting to use or act under the same for the space of two months, unless prevented by illness, forfeit such licences: And all such boatmen, before any such licence shall be given as aforesaid, shall be examined as to their knowledge of the coast, and their ability to conduct ships and vessels into the Downs, and the harbours of Dover, Ramsgate, and Margate and Folkstone, by the commissioners of the lord warden of the cinque ports for settling salvage and the other commissioners appointed by this act, at the respective places where such boatmen shall apply to be licensed at a meeting to be held for the purpose of this act, upon whose certificate the lord warden or his lieutenant, or the deputy lieutenant governor of Dover castle, or such other person or persons as shall be authorised

52 Geo. III. c. 39.

Warden of cinque ports to license boatmen to assist vessels in distress, and carry off pilots.

Boatmen to be examined before licence granted.

as aforesaid, shall be and are hereby authorised and empowered to grant such licences as aforesaid; and if the number of persons so approved and qualified to act as such licensed boatmen shall exceed the number prescribed by this act, the names of the persons so approved and qualified shall be entered in a book to be provided for that purpose, together with the times of their approval and examination, in order that they may regularly succeed by rotation to the vacancies that may from time to time occur of such licensed boatmen; and licences shall thereupon be granted to such boatmen, in such order and rotation from time to time as vacancies arise by death or forfeiture of licences or otherwise, in order that such number of licensed boatmen for such respective places as aforesaid may at all times be complete.

Commissioners for examining boatmen.

II. And be it further enacted, That the mayor of Dover, the mayor of Sandwich, and the mayor of Deal, and also the two senior justices of the peace for each of those places for the time being, not being commissioners of salvage, shall, and they are hereby appointed jointly with the said commissioners of salvage of the lord warden, commissioners for the purpose of carrying this act into execution within their respective jurisdictions, and examining such boatmen, and granting such certificates as aforesaid to boatmen for licences under this act.

Rules for boatmen to be made by the commissioners.

48 Geo. III. c. 130.

III. And be it further enacted, That it shall be lawful for the said commissioners of salvage at the respective places for which they are authorised and empowered to act as such commissioners, under and by virtue of an act passed in the forty-eighth year of the reign of his present Majesty, intituled An Act for preventing various Frauds and Depredations committed on Merchants, Ship Owners, and Underwriters, by Boatmen and others, within the Jurisdiction of the Cinque Ports; and also for remedying certain Defects relative to the Adjustment of Salvage, under a Statute made in the twelfth year of the reign of her late Majesty Queen Anne, to make rules, orders and regulations for the government of such number of boatmen to be licensed under this act, as are hereafter specified, at their respective places; and such rules, orders, and regulations when made, shall be printed and put up in conspicuous parts of the custom-houses, piers, harbours and places, to which such rules, orders, and regulations apply, for the inspection of all such boatmen and other boatmen, and all other persons having occasion to employ such boatmen, and all persons interested in the enforcing such rules, orders, and regulations as aforesaid.

Licence to boatmen to be free of stamps.

IV. And be it further enacted, That no licence granted or to be granted under the authority and provisions of this act, to any boatman, shall be subject to any stamp duty; any thing in any acts of parliament to the contrary notwithstanding.

Licence to describe the person, and to be produced to officer of customs, &c.

V. And be it further enacted, That every such licence shall be written or printed in large characters, so as to be read with great facility by night as well as by day; and every such licence shall contain a description of the person to whom the same is granted, and his place of residence, and the date of granting thereof, and shall specify by whom the same was granted; and any boatman so licensed shall, when on float, have with him his proper licence, and shall, whenever the same shall be demanded by any officer of cus-

tom or excise, or the master or other person having the command of any merchant ship or vessel, produce the same for inspection: And any boatman who shall alter any such licence, or obliterate the same, or knowingly permit or suffer any alteration or obliteration to be made in such licence, or who shall transfer or lend any such licence to any other person or persons, or who shall refuse to produce his licence for inspection, shall for every such offence forfeit such licence, or forfeit and pay any sum not exceeding ten pounds, at the discretion of the said commissioners.

Licence may be forfeited if altered or lent.

VI. Provided always, and be it further enacted, That no such licence, or any provision relating thereto or contained in this act, in relation to any such boatmen, and no rules or regulations made under the authority thereof, shall have any effect, or be deemed or construed to affect or in any manner to alter or interfere with any provision, claim, penalty, forfeiture, relation, matter or thing contained in this act, or in any act passed and now in force, or which may hereafter be passed, for the prevention of smuggling; or to exempt any such licensed boatman from any of the provisions of any such act, or any act or acts of parliament relating to His Majesty's customs or excise.

Licence and regulation of act not to affect provisions for prevention of smuggling, &c.

VII. Provided also, and be it further enacted, That if any boatman licensed under the provisions of this act shall be convicted of any offence against any law or laws relating to the revenue of customs or excise, or shall be concerned in or shall wilfully connive at any indirect practice or frauds against the revenues of customs or excise, or shall procure, abet, connive at or participate in any dishonest spoil, concealment, fraud, exaction or corrupt practice, relating to ships or vessels, or persons in distress at sea or by shipwreck, or relating to the tackle, apparel, furniture or cargoes of any such ship or vessel, or relating to the crew or passengers belonging thereto, or the monies, goods or chattels of any of them; then and in every such case, any such licensed boatman shall, over and above all other punishments, mulcts, or penalties, for such offences forfeit his licence, or be suspended from acting as a licensed boatman, at the discretion of the said commissioners.

Licensed boatmen offending against revenue laws, to forfeit licence, and be suspended at discretion of commissioners.

VIII. And be it further enacted, That all such licensed boatmen shall be paid the rates now allowed for putting cinque ports pilots on board ships or vessels, but shall not be entitled to any such rates unless the pilot is actually shipped and put on board of such ships or vessels, and such boatman shall be entitled to demand, have, and receive the sum of five shillings for every foot of the draught of water of any vessel piloted by them into any of the said harbours, and three shillings for every foot draught of water for piloting out of any of the said harbours; and such payments shall in both cases include the hire of the boat and crew in moderate weather; but if such pilotage or assistance shall take place under any circumstances of distress, then such boatmen shall be allowed such sum as the said commissioners of salvage of the lord warden shall in each such case award.

Rates to boatmen for putting pilots on board of vessels: in cases of distress, to be settled by commissioners.

IX. And whereas impositions are often practised upon passengers landed from vessels, and disputes often arise as to the sums proper to be paid in such cases; for remedy whereof, be it further enacted, that it shall be lawful for the commissioners of salvage at

Commissioners may settle dispute between boatmen and passengers, as

to sums to be paid for landing such passengers from ships.

any of the ports and places for which commissioners of salvage shall be appointed, upon the application of any boatman or of any passenger or passengers landed by any boatman at any such ports or places respectively, to hear and in a summary manner to settle any dispute which shall arise between any such boatman or passenger, and to fix and adjust the sum to be paid by such passenger or passengers respectively, for any service which shall have been performed by such boatman or boatmen in the bringing on shore or landing from any ship or vessel any passenger or passengers, or the goods or baggage of any passenger or passengers, and to make such order in relation thereto as shall appear to the said commissioners to be necessary and proper; and such commissioners shall for that purpose use and exercise all such and the like powers and authorities as are given to them in case of salvage, by the said recited act of the forty-eighth year aforesaid.

Licensed boatmen cruising without a pilot to leave one of the licensed boatmen on board of any ship as guarantee for bringing off pilot.

X. And be it further enacted, That no more than two licensed boatmen shall be allowed to go in each boat; and in every case in which any such licensed boatmen shall be cruising without any licensed cinque ports pilot, and shall fall in with any ship or vessel requiring a licensed cinque ports pilot, one of the licensed boatmen shall be left on board the ship or vessel wanting such pilot, as a guarantee for a proper licensed cinque ports pilot being brought or sent off the shore to such ship or vessel; and the boatman so left shall not be entitled to any sum of money or payment for being so left, or being on board of such ship or vessel.

Boats of licensed boatmen to be marked on the sails with distinguishable letters.

XI. And be it further enacted, That every such licensed boatman having a boat shall cause the number of his licence to be distinctly painted in figures on each bow and quarter of such boat, and on both sides of every one of the sails thereof, with the addition for the Dover boats of the Roman letters D. R. in black; the Deal boats, the letter D. in black; the Ramsgate boats, the letter R. in black; the Margate boats, the letter M. in black; which figures and letters shall be at least eighteen inches in length, and twelve inches in breadth: And every licensed boatman who shall not have the proper number and mark distinctly painted in manner aforesaid on the sails of his boat, or who shall have any sails on board not duly numbered and marked as aforesaid, or improperly numbered and marked, or who shall in any manner evade or attempt to evade any of the provisions of this act, shall forfeit his licence, and also a sum not exceeding ten pounds.

Boatmen not licensed forfeit 10*l*. for carrying the distinguishing marks.

XII. And be it further enacted, that if any boat or vessel not having a licensed boatman on board shall, without lawful authority, carry such distinguishing numbers and marks as aforesaid, the owner or owners, or the master or other person having charge of such boat or vessel displaying or carrying any such number or mark shall for every such offence forfeit and pay the sum of ten pounds.

Licensed boatmen refusing to take off licensed pilots to lose licence.

XIII. And be it further enacted, that every such licensed boatman as aforesaid, who shall, on being applied to by a licensed cinque port pilot to take him off to any ship or vessel, refuse so to do, unless prevented by illness, shall, upon due proof thereof to the satisfaction of the commissioners for executing this act, in the place where he shall be licensed, forfeit his licence, and any sum of money not exceeding the sum of twenty pounds for each offence.

XIV. And be it further enacted, that if any pilot, whose turn it shall be to go off on duty, shall refuse or neglect so to do, on being applied to by any licensed boatman to go off to any ship or vessel, such pilot so neglecting or refusing to go off to such ship or vessel shall lose his turn, and such ship or vessel shall be piloted by any duly licensed pilot who shall first get on board, but which shall not be taken for the turn of duty of such last-mentioned pilot.

Pilots neglecting to go off to any vessel shall lose their turn.

XV. And be it further enacted, that all licences to be granted by virtue of this act shall continue in force during so long time as the boatmen to whom the same shall be granted shall faithfully and diligently discharge their duty; and no such licence shall be annulled or suspended but upon such grounds of complaint or incapacity, negligence or misbehaviour, and an order made thereon by the commissioners acting in execution of this act, at a meeting to be held for the purposes of the said act.

Licences to continue in force during good behaviour.

XVI. And be it further enacted, that all the penalties and forfeitures imposed by this act, shall be recovered, levied, and applied as any penalties and forfeitures may be recovered, levied, and applied under the provisions of the said recited act of the last session of parliament; and all the provisions, clauses, and regulations in the said act contained for the recovery of penalties and forfeitures shall be used, applied, and enforced for the recovering, levying, and applying the penalties and forfeitures under this act, as fully and effectually as if the same were severally and separately re-enacted in and made part of this act.

Penalties to be recovered as penalties under act of last session.

XVII. And whereas by the said recited act passed in the last session of parliament, it is (amongst other things) enacted, that a proper and sufficient number of the cinque port pilots, not less than eighteen at any one time, and in succession from time to time, without intermission or any unnecessary delay, should at all seasonable times by day and night constantly ply at sea, or be afloat between the South Foreland and Dungeness, to take charge of ships and vessels coming from the westward: And whereas it may be expedient to suspend the carrying into execution that part of the said recited act; be it therefore enacted, that it shall be lawful for His Majesty in council by any order or orders made for that purpose, and published by proclamation in the Gazette, to suspend so much of the said recited act as directs the cinque ports pilots constantly to ply at sea, and be afloat, between the distances in the said act specified, either for any period His Majesty shall think proper, and to be in such case specified in such order or orders, and proclamation, or until any further order of His Majesty in council shall be issued for again carrying the said provision of the said recited act into effect and execution; and all the provisions, penalties, and forfeitures in relation to such specified number of pilots constantly plying at sea, and clauses and regulations for enforcing the same, shall, upon the issuing of such proclamation, remain and continue so suspended.

The Privy Council empowered to suspend provision in pilot act of last session, as to a certain number of cinque port pilots being constantly afloat.

XVIII. And be it further enacted, that this act shall be deemed and taken to be a public act, and shall be judicially taken notice of as such by all judges, justices, and others, without being specially pleaded.

Public act.

2 Geo. II. c. 63.

An Act for the better Regulation and Government of Seamen in the Merchants' Service.

Preamble.

WHEREAS the welfare and riches of this kingdom greatly depend on the trade and navigation thereof, the same being of great use and benefit, and tending very much to enriching the subjects thereof, upon which great numbers of the artificers' and manufacturers' livelihoods wholly depend; and whereas, for several years last past, the navigation carried on by the merchants to parts beyond the seas hath been, and doth still remain, under very great difficulties and expences, by the uncertainty they labour under by seamen and mariners, who ship themselves on board merchant ships, and after they have so done, neglect their duty, and will not remain on board their ships or vessels, to discharge their duty; and very often, when ships and vessels come to be cleared out, in order to proceed on their respective voyages, the seamen refuse to proceed with them, without coming to new agreements for increasing their wages, and many of them will leave their ships and vessels, and not proceed on their voyages, which puts the owners of such ships and vessels to great trouble and charges to get other sailors or mariners in their stead, and often is a means to overset the voyages of such ships and vessels, to the great prejudice of the owners and freighters of the goods on board the said ships and vessels; and yet such seamen and mariners, after they have committed such offences and disorders, will bring actions against the owners or masters of the said ships and vessels for the recovery of their wages, from the time of their shipping themselves unto the time they quit the said ships and vessels: And whereas many of the said seamen and mariners will neglect their duty when on board at sea, and desert their ships and vessels in foreign parts, which puts the said owners of ships and vessels to very great difficulties and expences to get others in their stead, to bring their ships and vessels home; and afterwards such seamen and mariners insist on recovering their wages, notwithstanding their voluntary desertion; all which is a great discouragement to trade and navigation: Therefore, in order to prevent such practices for the future, may it please your Majesty that it may be enacted, and be it enacted by the king's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the authority of the same, that from and after the 24th day of June, 1729, it shall not be lawful for any master or commander of any ship or vessel bound to parts beyond the seas to carry any seaman or mariner, except his apprentice or apprentices, to sea, from the port or place where he or they were entered, or shipped, to proceed on any voyage to parts beyond the seas, without first coming to an agreement or contract with such seamen or mariners for their wages, which agreement or agreements

No masters of ships to proceed on a voyage without agreeing with the mariners for wages,

apprentices excepted,

shall be made in writing, declaring what wages each seaman or mariner is to have respectively during the whole voyage, or for so long time as he or they shall ship themselves for; and also to express in the said agreement or contract the voyage, for which such seaman or mariner was shipped, to perform the same; and in case any master or commander of any ship or vessel shall carry out any seaman or mariner, except his apprentice or apprentices, upon any voyage to parts beyond the seas, without first entering into such agreement or contract, as aforesaid, and he and they signing the same, such master or commander shall forfeit and pay the sum of five pounds for every such seaman or mariner, which he shall carry to sea, without entering into such agreement in writing, as aforesaid, to the use of Greenwich Hospital, to be recovered upon information on the oath of one or more witness or witnesses, before any one or more of His Majesty's justice or justices of the peace, who are hereby authorised and required to issue out his or their warrant or warrants to bring before him or them such master or commander of any such ship or vessel; and in case he or they refuse to pay such penalty or forfeiture, as aforesaid, to grant his or their warrant or warrants, to levy the same by distress and sale of the offender's goods; and in case no distress can be found, to commit the offender or offenders to the common gaol of the city, county, town, or place, there to remain until he or they shall pay the same.

on forfeiture of 5*l.* for each mariner.

And be it further enacted, that if any seaman or mariner enter, or ship himself on board any merchant ship or vessel, on any intended voyage for parts beyond the seas, he and they so entering themselves, as aforesaid, shall, and they are hereby obliged to sign such agreement or contract within three days after he or they shall have entered themselves on board any ship or vessel, in order to proceed on any voyage, as aforesaid; which agreement or agreements, or contracts, after the signing thereof, shall be conclusive and binding to all parties, for and during the time or times so agreed or contracted for, to all intents and purposes, any custom or usage to the contrary in any wise notwithstanding.

Mariners to sign the agreement.

And be it enacted and declared by the authority aforesaid, that in case any seaman or mariner shall desert, or refuse to proceed on the voyage on board any ship or vessel, bound to parts beyond the seas, as aforesaid, or that shall desert from the ship or vessel, to which he or they shall belong, in parts beyond the seas, after he or they shall have signed such contract or agreement, he or they shall forfeit to the owners of such ship or vessel the wages which shall be due to him or them at the time of his or their deserting from such ship or vessel, or obstinately refusing to proceed on such voyage.

Penalty on mariners deserting.

And be it further enacted, that in case any such seaman or mariner, shall desert, or absent himself from any such ship or vessel, after he or they have entered into, and signed such contract or agreement to proceed upon any voyage to parts beyond the seas, as aforesaid, upon application made to any of His Majesty's justices of the peace, within their respective jurisdictions, by the master or commander, owner or owners, or other person or persons having charge of the said ship or vessel, to which such seaman or mariner did belong, it shall and may be lawful for such justice or justices, and

Justices of the peace may commit deserters to the house of correction.

they are hereby required to issue forth his or their warrant or warrants to apprehend such seaman or mariner; and in case he or they shall refuse to proceed on the voyage, for which he or they entered into contract or agreement to perform, as aforesaid, and shall not give a sufficient reason for such refusal, to the satisfaction of such justice or justices, then to commit such seaman or mariner to the house of correction, there to be kept to hard labour not exceeding thirty days, nor less than fourteen days, any thing to the contrary notwithstanding.

Penalty on mariners absenting from the ship without leave.

And be it enacted by the authority aforesaid, that in case any seaman or mariner shall absent himself from the ship or vessel, to which he shall belong, without leave from the master or commander, or other chief officer, having the charge of such ship or vessel, every such seaman or mariner shall, for every such day's absence, forfeit two days' pay to the use of Greenwich hospital, to be recovered, applied, and disposed of, as is hereinafter directed by this act.

Penalty for leaving the ship, before discharged.

And whereas seamen and mariners, after their ship's arrival at their unlivering port in Great Britain, ofttimes leave the ships and vessels before they are unladen, or before the said seamen and mariners are discharged by the masters or commanders of such ships and vessels; in order to prevent such practices for the future, be it further enacted by the authority aforesaid, that in case any seaman or mariner, not entering into the service of His Majesty, his heirs and successors, shall leave such ship or vessel, to which he or they belong, before he or they shall have a discharge in writing from the master or commander, or other person having the charge of such ship or vessel, he or they so leaving such ship or vessel shall forfeit one month's pay, to be recovered, applied, and disposed of, as is hereinafter directed.

Masters to pay mariners' wages in thirty days after c[oming] home.

And be it further enacted by the authority aforesaid, that upon the arrival of any ship or vessel into Great Britain, from parts beyond the seas, the masters or commanders of such ships or vessels shall be, and they are hereby obliged to pay the seamen and mariners belonging to such ships or vessels their wages, if demanded, in thirty days after the said ships or vessels being entered at the custom-house, except in case where a covenant shall be entered into to the contrary, or at the time the said seamen and mariners shall be discharged, which shall first happen, if demanded, deducting out of such wages the penalties and forfeitures by this act imposed, under the penalty of paying to each seaman or mariner that shall be unpaid, contrary to the intent and meaning of this act, twenty shillings over and above the wages that shall be due to each person, to be recovered by the same means and methods, as the wages may be recovered; and such payment of wages as aforesaid shall be good and valid in law, notwithstanding any action, bill of sale, attachment, or incumbrance whatsoever.

In case of suit for wages, master obliged to produce the agreement.

And be it further enacted, that no seaman or mariner, by entering into or signing such contract or agreement as aforesaid, shall be deprived of, or hindered from using any means or methods for the recovery of wages against any ship, the masters or owners thereof, which he may now lawfully make use of; and that in all cases where it shall or may be necessary that the contract or agree-

ment in writing aforesaid should be produced in court, no obligation shall lie on any seaman or mariner to produce the same, but on the master, owner, or owners of the ship, for which the wages shall be demanded; and no seaman or mariner shall fail in any suit, action, or process for recovery of wages for want of such agreement or contract being produced, any law, usage, or custom to the contrary notwithstanding.

Masters to deduct out of seamen's wages all penalties due to Greenwich hospital.

And be it further enacted, that the masters, or commanders, or owners of any ships or vessels shall, and they hereby have full power to deduct, out of the wages of any seaman or mariner, all the penalties and forfeitures to be incurred by this act, and to enter them in a book or books to be kept for that purpose, and to make oath, if required, to the truth thereof; which book or books shall be signed by the said master or commander of each ship or vessel respectively, and two or more principal officers belonging to such ships or vessels, setting forth that the penalties and forfeitures contained in such book or books are the whole penalties and forfeitures stopt from any seamen or mariners during the whole voyage; which penalties and forfeitures (except the forfeiture of wages to the owners on the desertion of any seaman or mariner, or on refusing to proceed on the voyage,) shall go to, and be applied to the use of Greenwich Hospital, and not otherwise, to be paid and accounted for by the masters and commanders of ships and vessels coming from parts beyond the seas, to the same officer or officers, at any port or place, who collects the sixpence per month, deducted out of seamen's wages, for the use of the said hospital; which officer shall have, and hereby hath, full power to administer an oath to every commander or master respectively touching the truth of such penalties and forfeitures, to be paid, applied, and disposed of, as aforesaid.

Forfeitures to be paid to the hospital within three months.

And be it further enacted, That in case any masters or commanders, or owners of any ships or vessels, shall deduct out of the wages of any seamen or mariners any of the penalties and forfeitures, which by this act are directed to be deducted, and applied to and for the use of Greenwich Hospital, and shall not pay the money so deducted to some officer or officers who collect the sixpence per month deducted out of seamen's wages, for the use of the said hospital, in the port or place where such deduction shall be made, within three months after such deduction, every person so neglecting to pay the money deducted as aforesaid shall forfeit and pay treble the value thereof to the use of the said hospital; which, together with the money deducted as aforesaid, shall and may be recovered by the same means and methods, as any penalties and forfeitures for not duly paying the said sixpence per month can or may be recovered.

Public act.

And be it further enacted, That this act shall be deemed and taken to be a public act; and all judges and justices are hereby obliged to take notice of it as such, without special pleading the same.

Continuation of the act.

Provided alwayss, and it is hereby enacted, That this act shall continue and be in force for the space of five years, to be reckoned from the said 24th day of June, 1729, and from thence to the end of the then next session of parliament, and no longer.

Act not to debar seamen from entering into His Majesty's service.

Provided that nothing in this act contained shall extend, or be construed to extend, to debar any seaman or mariner belonging to any merchant ship or vessel from entering, or being entered into the service of His Majesty, his heirs and successors, on board any of his or their ships or vessels; nor shall such seaman or mariner for such entry forfeit the wages due to him during the term of his service in such merchant-ship or vessel; nor shall such entry be deemed a desertion.

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31 Geo. III. c. 39.

An Act for the better Regulation and Government of Seamen employed in the Coasting Trade of this Kingdom.

Preamble.

2 Geo. II. c. 36, recited.

WHEREAS by an act made and passed in the second year of the reign of his late Majesty King George the Second, intituled An Act for the better regulation and government of Seamen in the Merchants' service, certain provisions are established for the government of seamen in ships trading to parts beyond the seas, which have been found by experience to be highly beneficial to the trade and navigation of this kingdom: And whereas the coast trade of this kingdom still remains under great difficulties' and inconveniences for want of the like regulations to be applied to, and established in the same, for the better government thereof: may it therefore please your Majesty that it may be enacted, and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, That from and after the 1st day of July, 1791, it shall not be lawful for any master or commander, or other person having or taking the charge or command of any ship or vessel, trading from and to any port or place, or ports or places in Great Britain, to carry out to sea any seaman or mariner (except his apprentice or apprentices) from any port or place in Great Britain, to proceed on any voyage to any other port or place in Great Britain, without having before entered into an agreement or agreements in writing with such seaman or mariner, to be signed as well by such master or commander, or other person as aforesaid, as by such seaman or mariner, for the wages which such seaman or mariner is to have respectively during the voyage or voyages, or during the time he shall have contracted or entered himself for; which contract or agreement shall declare what wages each seaman or mariner is to have, and when the same shall be payable, and for what time, or for what voyage or voyages such seaman or mariner shall have contracted or entered himself, every such agreement or agreements to be in force at the time of proceeding to sea on any such voy ge; and in case any master or commander, or other person having or taking the charge or command of any ship or vessel trading coastwise as aforesaid, shall

From July 1, 1791, no masters of vessels trading coastwise to proceed on a voyage without entering into an agreement with the seamen for wages, on penalty of 5*l.* for each.

carry out to open sea any seaman or mariner (except his apprentice or apprentices) upon any such voyage by open sea, without having first entered into such agreement or agreements signed as aforesaid, and such agreement or agreements then being in full force, such master or commander, or other person having or taking the charge or command of such ship or vessel, shall forfeit and pay the sum of five pounds for every such seaman or mariner which he shall so carry out to open sea, to the use of Greenwich Hospital, to be recovered upon information, on the oath of one or more witness or witnesses before any one or more of His Majesty's justice or justices of the peace of any county, riding, shire, or place in Great Britain, where such ship or vessel shall depart from, or come to, in or during such voyage, who are hereby authorised and required respectively to issue out his or their warrant or warrants to bring before him or them such master or commander, or other person having or taking the charge or command of any such ship or vessel; and in case such master or commander, or other person as aforesaid, shall neglect or refuse to pay such penalty or forfeiture as aforesaid, to grant his or their warrant or warrants to levy the same by distress and sale of the offender's goods; and, in case no distress can be found, to commit the offender to the common gaol of the city, county, town, or place, there to remain until he shall pay the same.

Agreements to be binding.

II. And be it further enacted, That every seaman or mariner entering himself on board any ship or vessel trading coastwise as aforesaid, for any intended voyage or voyages, or for any time to be stipulated in and by such agreement or agreements, shall, and he is hereby required and obliged to subscribe his signature or mark to such agreement or agreements respectively, at the time of his so entering himself; which agreement or agreements, after the same shall be so subscribed by such seaman or mariner, and signed by the master or commander, or other person having or taking the charge or command of such ship or vessel, shall be conclusive and binding to all parties, for and during the time or times so agreed or contracted for, to all intents and purposes, any law, custom, or usage to the contrary in any wise notwithstanding.

Penalty on seamen neglecting or refusing to proceed on voyages for which they shall have engaged.

III. And be it further enacted by the authority aforesaid, That in case any seaman or mariner, after he shall have entered into such agreement or agreements as aforesaid, shall neglect or refuse to proceed on the intended voyage or voyages for which he shall have entered, or upon which such ship or vessel shall be destined to proceed, every such seaman or mariner shall forfeit and pay to the owner or owners of such ship or vessel all such wages as shall be due to him at the time of his so neglecting or refusing to proceed on such voyage or voyages; and it shall and may be lawful, upon complaint made of the same to any of His Majesty's justices of the peace within their respective jurisdictions, by the master or commander, owner or owners, or any other person or persons having charge or command of the ship or vessel to which such seaman or mariner did belong, for such justice, and he is hereby required to issue his warrant to apprehend such seaman or mariner: and in case such seaman or mariner shall refuse to proceed on the voyage or voyages agreed on, or on the voyage or voyages on which the

ship or vessel shall be destined to proceed, within the time contracted for, and shall not give a sufficient reason for such refusal, to the satisfaction of such justice, then to commit such seaman or mariner to the house of correction, there to be kept to hard labour for any time not exceeding thirty days, nor less than fourteen days.

Penalty on seamen absenting themselves, or deserting before the expiration of the time for which they shall have engaged.

IV. And be it enacted by the authority aforesaid, That in case any seaman or mariner, after having entered into such agreement or agreements as aforesaid, shall wilfully absent himself from the ship or vessel to which he shall belong, before the voyage or voyages agreed upon, or upon which such ship or vessel shall have proceeded, shall be completed, and the cargo of such ship or vessel delivered, or before the time for which he shall have contracted or entered shall be expired, every such seaman and mariner shall, for every day he shall be so absent from his said ship or vessel, forfeit two days' pay to the use of Greenwich Hospital, to be recovered, applied, and disposed of as is hereinafter directed; and in case any seaman or mariner, not entering into the service of His Majesty, his heirs or successors, shall totally leave or quit his said ship or vessel before the voyage or voyages agreed upon, or upon which such ship or vessel shall have proceeded, shall be completed, and the cargo of such ship or vessel delivered, or before the expiration of the time for which he shall have contracted or entered, or before such seaman or mariner shall have a discharge in writing from the master or commander, or other person having the charge or command of such ship or vessel, such seaman or mariner so leaving or quitting such ship or vessel shall forfeit one month's wages, to be recovered, applied, and disposed of as hereinafter is directed.

Masters to settle with the men for their wages, in the manner herein directed, on penalty of 20*s*.

V. And be it further enacted by the authority aforesaid, That the master or commander, or other person having or taking the charge or command of any ship or vessel employed in trading coastwise as aforesaid, and contracting with any seaman or mariner to perform any such voyage, shall, and he is hereby obliged and required to pay to every such seaman or mariner belonging to such ship or vessel their wages, if demanded, within five days after such ship or vessel shall have entered at the custom-house, or the cargo shall be delivered, or at the time the said seamen or mariners shall be discharged, which shall first happen, unless an agreement shall have been made or entered into to the contrary, in which case the wages of such seamen or mariners shall be paid in terms of such agreement, after deducting, in every such case, out of such wages, the penalties and forfeitures by this act imposed, in case any shall have been incurred, upon pain of forfeiting to each seaman or mariner, to whom payment of his wages shall not have been made according to this act, of the sum of twenty shillings, to be paid to each such seaman or mariner, over and above the wages that shall be due to him, to be recovered by the same means and methods as the wages of seamen or mariners may by law be recovered; and such payment of wages as aforesaid shall be good and valid in law, notwithstanding any action, bill of sale, attachment, or incumbrance whatsoever.

Seamen not deprived of the usual means for recovery of

VI. And be it further enacted, That no seaman or mariner, by entering into or signing such contract or agreement as aforesaid, shall be deprived of, or hindered from, using any means or me-

thods for the recovery of wages against any ship, or the masters or owners thereof, which he may now lawfully make use of; and that in all cases where it shall or may be necessary that the agreement or agreements in writing aforesaid should be produced in Court or elsewhere, no obligation shall lie on any seaman or mariner to produce the same, but such obligation shall lie on the master or commander, or other person having the charge or command, or the owner or owners of the ship or vessel for which the wages shall be demanded; and no seaman or mariner shall fail, in any suit, action, or process for recovery of wages, for want of such agreement or agreements being produced, but shall and may proceed therein as if no such agreement in writing had been made; any law, usage, or custom to the contrary notwithstanding.

wages; and in case of dispute the master to produce the agreement.

VII. And be it further enacted, That the masters or commanders, or owners, of any such ships or vessels, or other persons having the charge or command thereof, shall, and they hereby have full power and are required to deduct out of the wages of any seaman or mariner incurring the penalties and forfeitures imposed by this act, whenever the same shall be incurred, and to enter them in a book or books to be kept for that purpose, and to make oath, if required, to the truth thereof; which book or books shall be signed by the said master or commander, or other person having the charge or command of each such ship or vessel respectively, setting forth that the penalties and forfeitures contained in such book or books are the whole penalties and forfeitures stopped from any seamen or mariners by such master or commander, or other person as aforesaid; and which penalties and forfeitures (except the forfeiture of wages to the owners on any seaman or mariner's refusing to proceed on their voyage or voyages) shall go to and be applied to the use of Greenwich Hospital, and shall be paid and accounted for by the masters, commanders, and other persons having the charge or command of such ships or vessels, to the officer of any port or place who shall collect the sixpence per month deducted out of seamen's wages for the use of the said hospital, which officer shall have and hereby hath full power to administer an oath to every commander, master, or other person as aforesaid, respectively, touching the truth of such penalties and forfeitures.

Penalties to be deducted out of the men's wages, and applied (except those to the owners) to the use of Greenwich Hospital.

VIII. And be it further enacted, That in case any masters or commanders, or owners of any such ships or vessels, or other person having the charge or command thereof, shall deduct out of the wages of any seamen or mariners any of the penalties and forfeitures which by this act are directed to be deducted and applied to and for the use of Greenwich Hospital, and shall not pay the money so deducted to some officer who shall collect the sixpence per month deducted out of seamen's wages for the use of the said hospital, in the port or place where such deduction shall be made, within three months after such deduction, every such person so neglecting to pay the money so deducted as aforesaid shall forfeit and pay treble the value thereof to the use of the said hospital; which, together with the money deducted as aforesaid, shall and may be recovered by the same means and methods as any penalties

Penalty on masters not paying the penalties in three months after being so deducted.

and forfeitures for not duly paying the said sixpence per month can or may be recovered.

How penalties are to be ascertained, where the seamen contract for the voyage.

IX. And be it further enacted by the authority aforesaid, That in all cases where the seamen or mariners of any ship or vessel trading coastwise as aforesaid have contracted, or shall contract, for wages by the voyage, and not by the month, or other stated period of time, the penalties and forfeitures to be incurred by such seamen or mariners under this act shall be ascertained in manner following (that is to say) if the whole time spent in the voyage agreed or proceeded upon shall exceed one lunar month, the forfeiture of one month's pay shall be accounted and deemed a forfeiture of a sum of money bearing the same proportion to the whole wages as a lunar month shall bear to the whole time spent in the voyage; and in like manner the forfeiture of two days' pay shall be accounted and deemed a forfeiture of a sum of money bearing the same proportion to the whole wages as two days shall bear to the whole time spent in the voyage; and if the whole time spent in the voyage shall not exceed one lunar month, the forfeiture of one month's pay shall be accounted and deemed a forfeiture of the whole wages contracted for; and if such time shall not exceed two days, the forfeiture of two days' pay shall be accounted and deemed a forfeiture of the whole wages contracted for.

Agreements not liable to stamp duties.

This act not to extend to vessels under one hundred tons' burthen, nor to debar seamen from entering into His Majesty's service.

X. Provided always, and it is hereby enacted, That no agreement or agreements, to be made by virtue or under the authority of this act, shall be or be deemed liable to, or charged with any stamp-duties whatsoever: And provided also, That nothing herein contained shall extend, or be construed to extend, to any ship or vessel trading coastwise as aforesaid, or to any master or commander, seamen or mariners, belonging thereto, unless such ship or vessel shall be of the burthen of one hundred tons or upwards, and shall go to open sea: And provided also, That nothing in this act contained shall extend, or be construed to extend, to debar any seaman or mariner belonging to any such ship or vessel from entering or being entered into the service of His Majesty, his heirs or successors, on board any of his or their ships or vessels; nor shall such seaman or mariner, for such entry, forfeit the wages due to him during the term of his service in such ship or vessel, nor shall such entry be deemed a desertion.

37 Geo. III. c. 73.

An Act for preventing the Desertion of Seamen from British Merchant Ships trading to His Majesty's Colonies and Plantatio in the West Indies.

Preamble.

WHEREAS seamen and mariners, after entering into articles to serve on board British merchant ships, during the voyages from Great Britain to His Majesty's colonies and plantations in the West Indies, and back to Great Britain, do frequently desert from such ships on their arrival at or in such colonies and plantations, on account of the exorbitant wages given by masters and commanders of other British merchant ships, by the run or gross to seamen and mariners, when in such colonies or plantations, to induce them to enter on board their ships; and whereas such seamen and mariners, upon entering into articles for such voyages from Great Britain, usually receive large sums of money in advance, for the purpose of their outfit; and monthly allowances are frequently paid to their families, towards their support and maintenance, during the absence of such seamen and mariners; and whereas such desertions have been the means of depriving many merchant ships of a sufficient number of seamen and mariners to navigate them back to Great Britain, and thereby occasioned great losses to the merchants trading to the said colonies and plantations; for remedy whereof may it please your Majesty, that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, that from and after the 1st day of July, 1797, all and every seaman, mariner, and other person who shall desert, at any time, during the voyage, either out or home, from any British merchant ship trading to or from the said colonies or plantations, shall, over and above all punishments, penalties, and forfeitures, to which he is now by law subject, forfeit all the wages he may have agreed for with, or be entitled to, during the voyage, from the master or owner of the ship on board of which he shall enter, immediately after such desertion.

From July 1, 1797, seamen deserting from merchant ships to or from the West Indies, to forfeit their wages on board the ship entered into after such desertion.

II. And be it further enacted, That all and every master or commander of any British merchant ship who shall, from and after the said 1st day of July, 1797, hire or engage to serve on board his ship or vessel any seaman, mariner, or other person who shall, to the knowledge of such master, have deserted from any other ship or vessel, shall forfeit and pay the sum of one hundred pounds, to be recovered, levied, and applied, as hereinafter directed.

Masters hiring seamen who have deserted from any other ship, to forfeit 100*l*.

III. And be it further enacted, That no master or commander of any merchant ship or vessel which shall, from and after the 1st day of July, 1797, sail or proceed from any port or place in Great Britain, shall hire or engage, or cause or procure to be hired or

No master sailing from Great Britain after July 1, 1797, shall hire seamen in the

West Indies at more than double wages, unless authorised by the governor, &c.

engaged, any seaman, mariner, or other person, at any port or place within His Majesty's colonies or plantations in the West Indies, to serve on board any such merchant ship or vessel at or for greater or more wages or hire for such service than according to the rate of double monthly wages, contracted for with the seamen, mariners, and other persons, hired or engaged to serve on board such ship or vessel at the time of her then last departure from Great Britain, being in the same degree and station in which such seaman, mariner, or other person, shall be so hired or engaged at any such port or place as aforesaid, unless the governor, chief magistrate, collector, or comptroller of such port or place in the said colonies or plantations, shall think that greater or more wages or hire than double the monthly wages aforesaid should or ought to be given to such seaman, mariner, or other person as aforesaid, and do and shall accordingly authorise or direct the same to be given by writing under his hand; that then, and in such case, the master or commander of such ship or vessel shall and may be at liberty to pay, and the seaman, mariner, or other person, on board such ship or vessel, to receive such greater or higher wages as such governor, chief magistrate, collector, or comptroller shall direct, as aforesaid; and that all contracts, bonds, bills, notes, and other securities, promises, and undertakings, which shall be made, entered into, or given, contrary to the intent and meaning of this act, shall be null and void to all intents and purposes; and that the master or commander of any such merchant ship or vessel, or other person or persons whomsoever, who shall make, enter into, or give, or cause or procure to be made, entered into, or given, any such contract, bond, bill, note, or other security, promise, or undertaking, or who shall hire or engage, or cause or procure to be hired or engaged, any seaman, mariner, or other person, to enter on board any ship or vessel contrary to the intent and meaning of this act, or who shall pay, or cause, or procure to be paid or given, any greater or more hire or wages, or other gratuity or advantage whatsoever, to or for any seaman, mariner, or other person so hired or engaged at any such port or place within His Majesty's colonies or plantations in the West Indies aforesaid, than is allowed or directed by this act, shall, for every such offence, forfeit and pay the sum of one hundred pounds; to be recovered, levied, and applied in the manner hareinafter directed.

Contracts contrary to this act void, and persons entering into them, &c. to forfeit 200*l*.

Every ship trading to the West Indies to have one apprentice under seventeen years old, for every 100 tons' burthen, &c.

IV. And be it further enacted, That all and every master and masters of any merchant ship or merchant ships trading to His Majesty's colonies and plantations in the West Indies, shall have on board his or their ship or ships at the time of such ship or ships clearing out from Great Britain, one apprentice, who shall be under the age of 17 years, duly indented for three years, for every one hundred tons' admeasurement of such ship or ships, and so in proportion for every one hundred tons which such ship or ships shall admeasure according to the certificate of registry; and the indenture or indentures of every such apprentice shall be duly enrolled at the custom-house of the port from whence any such ship shall clear out, with the collector or comptroller, within one month after the date or execution thereof; which said apprentice and apprentices shall be, and is, and are hereby exempt from

Apprentices exempt from

serving in His Majesty's navy for the space of three years from the date of such indenture or indentures; and all and every owner or owners, or master and masters, neglecting to enrol the same as aforesaid, shall, for every such offence, forfeit and pay the sum of ten pounds, to be paid in manner following: (that is to say,) one moiety by the owner or owners of such ship or ships, and the other moiety by the master or masters thereof, to be levied, recovered, and applied, in manner hereinafter mentioned.

serving in the navy for three years. Penalty of 10*l.* for not enrolling them.

V. And be it further enacted, That all and every master and masters of such ship or ships shall, within ten days after their arrival out at any port or ports in the said colonies or plantations, and also within ten days after their arrival home at any port or ports in Great Britain, deliver upon oath, to be made before the collector or comptroller of such port or ports respectively, (who is hereby authorised to administer the same,) a true and exact list and description of all and every the crew on board such ship or ships at the time of their clearing out from any port or ports in Great Britain, and also of the crew on board the same at the time of their arrival in any port or ports in the said colonies or plantations, and also a true and exact list and description of all and every seaman, mariner, or other person who has or have deserted from such ship or ships, or who has or have died during the voyage; and also a true account of the wages due to each seaman, mariner, or other person so dying, at the time of his death; and all and every master and masters omitting, neglecting, or refusing so to do, shall for every such offence forfeit the sum of 50*l.*; and for which said list and account so delivered such collector or comptroller shall be entitled to demand and receive from the person so delivering the same the fee of two shillings and sixpence, and no more; and it shall and may be lawful to and for all and every master and masters of any ship or ships, or other person or persons, to inspect such list and lists, from time to time, as he or they may think proper; for which inspection the said collector or comptroller shall be entitled to demand and receive from the person making the same the sum of one shilling, and no more.

Masters of such ships within ten days after arrival out and home, to deliver lists containing certain particulars, on penalty of 50*l.*

Penalty.

Allowance to collector, &c. on delivery of lists.

VI. And be it further enacted by the authority aforesaid, That no seaman, mariner, or other person, who shall at any port or place, within His Majesty's colonies or plantations in the West Indies, hire or engage himself to serve, or who shall in the said colonies or plantations enter on board any merchant ship or vessel which shall sail from Great Britain after the 1st day of July, 1797, shall be entitled to, nor shall he sue for, recover, or receive any greater or more wages or hire, or other gratuity or advantage whatsoever, on account of, or for such his service, than such wages or hire as hereinbefore authorised or directed to be paid or received.

Wages to seamen entering any vessel in the West Indies.

VII. And be it further enacted, That all and every sum and sums of money which shall be due for wages to any seaman, mariner, or other person hired or engaged on board any British merchant ship, for any voyage from any port or ports in Great Britain, to any port or ports in the said colonies or plantations, and who has or have died on board during the voyage, shall, within three calendar months after the arrival of such merchant ship in any

Wages of dead men paid to receiver of sixpence duty for Greenwich Hospital.

port or ports in Great Britain, be paid to the receiver of the sixpenny duty for Greenwich Hospital, for the time being, to the use of the executor or executors, administrator or administrators, of the seaman, mariner, or other person so dying; and if any master of any such merchant ship shall neglect or refuse to pay over, or tender to the said receiver all and every such sum and sums of money, within the time hereinbefore limited, he shall forfeit and pay, for every such offence, the sum of 50*l.* and also double the amount of the sum or sums of money so due to any seaman, mariner, or other person for wages as aforesaid.

Penalty.

Disposition of such wages, if not demanded in three years.

VIII. Provided always, and be it further enacted, That all and every such sum and sums of money, which shall not be lawfully demanded of the said receiver within the term of three years after payment thereof to him in manner aforesaid, shall be forfeited, and shall go and be paid to the use of the Seamen's Hospital of the port to which such ship belongs; but in case there shall be no seamen's hospital at the port to which such ship belongs, then to and for the use and benefit of the old and disabled seamen of the same port, and their families, to be distributed at the discretion of the magistrates for the county where such port shall be situate, or any two or more of them.

Disposition of penalties.

IX. And be it further enacted by the authority aforesaid, That the penalties and forfeitures given by this act shall be paid and applied in manner following, that is to say, one third part thereof for and towards the support of Greenwich Hospital; one other third part thereof for and towards the support of the seamen's hospital at the port to which the ship or vessel in respect of which the forfeiture shall arise belongs; but in case there shall be no seamen's hospital at the port to which such ship or vessel belongs, then to and for the use and benefit of the old and disabled seamen of the same port, and their families, to be distributed at the discretion of the persons having the direction of the merchants' seamen's fund at such port; or, in case there shall be no such establishment there, by the magistrates or overseer of the poor of such port; and the other third part thereof to and for the person or persons who shall inform and sue for the same; and that such penalty shall be recovered by bill, plaint, or information in any of His Majesty's Courts of Record at Westminster; or such of them as do not exceed the sum of twenty pounds, upon information, on the oath of one or more witnesses, before any one or more of His Majesty's justice or justices of the peace in any part of the kingdom of Great Britain, who shall not reside more than ten miles from the place of abode of the person or persons complained of, which justice and justices is and are hereby authorised and required to issue out his or their warrant or warrants, to bring before him or them every person charged with any offence under this act; and in case he or they shall refuse or neglect to pay such penalties or forfeitures as aforesaid, to issue his or their warrant or warrants to levy the same by distress and sale of the offender's goods; and in case no distress can be found, to commit the offender or offenders to the common gaol of the city, town, or place, within the jurisdiction of such respective justice or justices, there to remain for the space of three calendar months, or until he or they shall pay the same.

Recovery of penalties.

X. Provided nevertheless, and be it enacted, That nothing in this act shall extend, or be construed to extend, to any contract or agreement which shall or may be made with any seaman, mariner, or other person hired or engaged to serve on board any merchant-ship or vessel, at any port or place within His Majesty's colonies or plantations in the West Indies, who shall, at the time of such hiring or engagement, produce and deliver to the master and commander of such merchant-ship or vessel a certificate under the hand of the master or commander of the ship or vessel on board of which such seaman, mariner, or other person had then last served, signed in the presence of one or more witness or witnesses, stating their usual place or places of abode, thereby declaring or certifying that such seaman, mariner, or other person had been duly discharged from the ship or vessel on board of which he had so last served; and which certificate the said master or commander shall grant within three days next after application made to him by such seaman, mariner, or other person, before a witness; or in default thereof shall forfeit and pay the sum of twenty pounds, to be levied, recovered, and applied, in manner hereinbefore directed; nor to any contract or agreement to be made with any seaman, mariner, or other person hired or engaged to serve on board any merchant-ship or vessel, which through necessity, or on account of any hazardous service or extraordinary duty, require such contract or agreement to be made, and more wages or hire given, and of which necessity, service, or extraordinary duty, proof shall be made on oath before the chief magistrate or principal officer of any port or place, or before any justice or justices of the peace of the said colonies or plantations; and provided also that such seaman, mariner, or other person so hired or engaged to serve on board any ship or vessel so requiring such service, shall not have deserted from the ship or vessel on board of which he had then last served; and provided also, that no greater or higher wages or hire shall be given by any master or commander, or taken or received by any seaman, mariner, or other person as aforesaid, except in cases of such necessity, very hazardous service, or extraordinary duty, as aforesaid, than after the rate of double the monthly wages, or the wages to be settled or directed by any governor, chief magistrate, collector or comptroller, as hereinbefore directed to be paid or received as aforesaid.

Proviso for seamen producing certificates of discharge.

Masters to grant certificates.

Penalty.

Proviso for seamen hired through necessity, &c.

Proof thereof.

Proviso.

XI. And be it further enacted by the authority aforesaid, That from and after the said 1st day of July, 1797, the articles to be entered into by and between the masters, seamen, and mariners, of such merchant-ship or ships, shall be agreeable and to the purport and effect as mentioned in the Schedule hereto annexed, marked with the letter (A.)

Articles agreeable to annexed Schedule.

XII. And be it further enacted by the authority aforesaid, That this act shall be deemed and taken to be a public act; and all judges and justices are hereby required to take notice of it as such, without specially pleading the same.

Public act.

THE SCHEDULE TO WHICH THIS ACT REFERS.

(A.)

Ship.

IT is hereby agreed between the master, seamen, and mariners of the ship ———, now bound for the port of ———, and ———, the master or commander of the said ship, that in consideration of the monthly or other wages against each respective seaman or mariner's name hereunto set, they severally shall and will perform the above-mentioned voyage; and the said master doth hereby agree with and hire the said seamen and mariners for the said voyage, at such monthly wages, to be paid pursuant to the laws of Great Britain; and they the said seamen and mariners do hereby promise and oblige themselves to do their duty, and obey the lawful commands of their officers on board the said ship or boats thereunto belonging, as become good and faithful seamen and mariners; and at all places where the said ship shall put in or anchor during the said ship's voyage, to do their best endeavours for the preservation of the said ship and cargo, and not to neglect or refuse doing their duty by day or night; nor shall go out of the said ship on board any other vessel, or be on shore under any pretence whatsoever, till the voyage is ended, and the ship discharged of her cargo, without leave first obtained of the master, captain, or commanding officer on board; and in default thereof they freely agree to be liable to the penalties mentioned in the act of parliament made in the second year of the reign of King George the Second, intituled, An Act for the better regulation and government of Seamen in the Merchants' Service; and the act made in the thirty-seventh year of his present Majesty's reign, intituled An Act for preventing the Desertion of Seamen from British Merchant Ships trading to His Majesty's Colonies and Plantations in the West Indies; and it is further agreed by the parties to these presents, that twenty-four hours' absence without leave shall be deemed a total desertion, and render such seamen and mariners liable to the forfeitures and penalties contained in the acts above recited; that each and every lawful command which the said master shall think necessary to issue for the effectual government of the said vessel, suppressing immorality and vice of all kinds, be strictly complied with, under the penalty of the person or persons disobeying forfeiting his or their whole wages or hire, together with every thing belonging to him or them on board the said vessel. And it is further agreed that no officer or seaman, or person belonging to the said ship, shall demand or be entitled to his wages, or any part thereof, until the arrival of the said ship at the above-mentioned port of discharge, and her cargo delivered, nor less than twenty days, in case the seaman is not employed in the delivery. And it is hereby further agreed between the master and officers of the said ship, that whatever apparel, furniture, and stores each of them may receive into their charge, belonging to the said ship, shall be accounted

2 Geo. II. c. 36.

for on her return; and in case any thing shall be lost or damaged through their carelessness or insufficiency, it shall be made good by such officer or seaman by whose means it may happen, to the master or owner of the said ship. And whereas it is customary for the officers and seamen on the ship's return home in the river, and during the time their cargoes are delivering, to go on shore each night to sleep, greatly to the prejudice of such ship and freighters; be it further agreed by the said parties, that neither officer nor seaman shall on any pretence whatsoever be entitled to such indulgence, but shall do their duty by day in discharge of the cargo, and keep such watch by night as the master or commander of the said ship shall think necessary, in order for the preservation of the above. And whereas it often happens that part of the cargo is embezzled after being delivered into lighters, and as such losses are made good by the owners of the ships; be it therefore agreed by these presents, that whatever officer or seaman the master shall think proper to appoint shall take charge of the cargo in the lighters, and go with the same to the lawful quay, and there deliver his charge to the ship's husband, or his representative, or see the same safely weighed at the king's beam; and in consequence of their true fidelity such officer or seaman shall be entitled to two shillings and sixpence each lighter, exclusive of their monthly pay; and should it so happen that lighters are detained a considerable time at the quay before they can be unloaded, such officer and seaman so appointed shall in that case be entitled to two shillings and sixpence for every twenty-four hours, exclusive of their said monthly pay; that each seaman and mariner who shall well and truly perform the above-mentioned voyage (provided always that there be no plunderage, embezzlement, or other unlawful acts committed on the said vessel's cargo or stores) shall be entitled to their wages or hire that may become due to him pursuant to this agreement; that for the due performance of each and every the above-mentioned articles and agreements, and acknowledgments of their being voluntary and without compulsion, or any other clandestine means being used, the said parties have hereto subscribed their names, the day and month set opposite to their respective names.

Place and Time of Entry.	Men's Names.	Quality.	Witness to each Man's signing.	Pay in the River.		Voyage per month, or by the run for the voyage.	Whole wages.
				Whole.	Half.		

59 Geo. III. c. 58.

An Act for facilitating the Recovery of the Wages of Seamen in the Merchant Service.—[*2d July*, 1819.]

WHEREAS the seamen and mariners employed in the merchant service, and in the coasting trade of this kingdom, are exposed to great difficulties, expence, and inconvenience in suing for or obtaining payment of their wages, in cases of dispute with the masters or owners of vessels in which they may have served; and it is expedient that greater facility should be given for recovery of such wages: May it therefore please your Majesty that it may be enacted, and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, that from and after the 1st day of August, in the year of our Lord 1819, it shall be lawful for any seaman, mariner, or other person (except masters or apprentices), who shall have served on board any ship or vessel trading from any port or place, or ports or places, in that part of the United Kingdom called England, to ports beyond the seas, or to any other port or place in Great Britain, by virtue or in pursuance of any contract or engagement in writing or not in writing, and whether the same be by parol, or by deed under seal, or otherwise, in case the master or commander, or other person having or taking the charge of any such ship or vessel, after the expiration of two days from the time of entry of such ship or vessel at the Custom-house, or from the delivery of her cargo, or from the time when such seaman, or mariner, or other person (except as aforesaid), shall be discharged, which shall first happen (unless an agreement shall have been made and entered into to the contrary, and in that case, after the expiration of the time so stipulated or agreed for the payment of such wages as aforesaid), neglect or refuse to pay to any such seaman, mariner, or other person (except as aforesaid), his or their wages, or any part thereof, to complain to any justice or justices of the peace residing in or near to the place where such ship or vessel shall have ended her voyage, or been cleared at the Custom-house, or delivered her cargo, or to any justice or justices of the peace residing in or near to the place where such master or commander, or other person having or taking the charge of any such ship or vessel, or (in case of there being no master or commander, or other person in charge of any such ship or vessel) where any owner or owners thereof shall then happen to be, and thereupon it shall be lawful for any such justice or justices of the peace respectively, and they are hereby required, upon such complaint made to them upon oath or affirmation, to issue a summons to such master or commander, or other person having or taking the charge of any such ship or vessel, or (in case of there being no master or commander or other person in charge of any such ship or vessel) to

Justices empowered, or complaint of seamen, to hear and settle disputes about wages, not exceeding 20*l*.

such owner or owners thereof, to appear before them at such time and place to be in such summons specified; and upon the party or parties appearing in pursuance of such summons, or not appearing after having been so summoned, the said justice or justices shall, and they are hereby empowered to examine upon oath such seaman, mariner, or other person (except as aforesaid) or any other witness or witnesses, touching any such complaint, or any difference or dispute respecting such wages, and to make such order for payment of so much wages to such seaman, mariner, or other person as aforesaid, as to such justice or justices shall seem reasonable and just; provided that the sum in question do not exceed twenty pounds so claimed to be due to any one seaman, mariner, or other person as aforesaid; and in case of refusal to pay, or non-payment of any sum or sums of money so ordered, by the space of two days next after such order and determination, such justice or justices shall and may issue forth their warrant to levy the same by distress and sale of the goods and chattels of such master or commander or other person having or taking the charge or command of any such ship or vessel, or (in case of there being no master or commander, or other person in charge of any such ship or vessel) of any such owner or owners as aforesaid, rendering the overplus (if any there be) after deducting all the costs, charges, and expences of any summonses, informations, complaints, hearings, warrants, and of such distress, and the keeping, appraisement, or sale thereof, or otherwise relating thereto, unto the person or persons whose goods and chattels shall be so distrained and sold; and in case sufficient distress shall not be found for payment and satisfaction of the amount of wages so ordered to be paid by such justice or justices, and the same, with such costs, charges, and expences as aforesaid, shall not be paid within the said period of two days, it shall and may be lawful for such justice or justices of the peace, and they are hereby authorized and required, by warrant or warrants under their hands and seals, to levy the amount of the wages so ordered to be paid, together with such costs, charges, and expences as aforesaid, on the ship or vessel for the service on board which such wages shall be so ordered to be paid, or any of the tackle, furniture, or apparel thereof, rendering the overplus thereof (if any), after payment of such expences as aforesaid, to the master or commander or owner thereof; and the decision of such justice as aforesaid shall be final and conclusive, as well on such seaman, mariner, or other person, as upon such master or commander, or other person taking the charge or command of such ship or vessel, and the owner or owners thereof; save and except in such cases in which an appeal shall be interposed by either party to the High Court of Admiralty, such appeal to be interposed within the space of seven days after the order of the said justice or justices so to be made as aforesaid.

On refusal to comply with justices determination, how wages to be recovered.

Justice's determination to be final, unless appealed against to the High Court of Admiralty.

II. And be it further enacted, That in case the seaman, or mariner, or other person so claiming to be entitled to such wages as aforesaid, or the party or parties who is or are ordered to pay the same, or their agents respectively, shall be dissatisfied with such order and decision of the justice or justices touching such wages as aforesaid, it shall be lawful for either of them respectively,

If seamen or others are dissatisfied, to give notice of intention to appeal.

within forty-eight hours after the making such order as aforesaid, but not afterwards, to give notice in writing to the justice or justices so making such order of his, her, or their desire of obtaining the judgment of the High Court of Admiralty respecting the said wages, and the order so made thereon as aforesaid, by delivering the same to such justice or justices, or leaving the same at their last or most usual place of abode; and thereupon the party so resisting or disputing the claim to such wages, or the order to be made by such justice or justices thereon, shall be compelled to proceed within thirty days from the date of such order, by taking out a monition against the adverse party, and shall, on the service of such notice, give good and sufficient bail in double the amount of the wages so ordered to be paid as aforesaid, and which bail shall be taken by a commissioner for taking examinations in prize causes, if there shall be one in the port or place where such difference shall arise or order be made; but if there shall be no such commissioner there, then the said justice or justices who shall pronounce such order, or any other of His Majesty's justices of the peace, are hereby authorized to take the same; and the commissioner, justice, or justices, who shall take such bail, shall certify the same according to the form contained in the schedule hereunto annexed, and transmit the same without delay to the High Court of Admiralty, and also a copy of the order so made by such justice or justices, on unstamped paper, certified under the hand or hands of such commissioner, justice, or justices, taking the bail as aforesaid; and the same shall be admitted by such Court of Admiralty as evidence in the cause.

Seamen not to be deprived of agreements entered into before the passing of this act.

III. And be it further enacted, That no seaman, or mariner, or other person, by entering into or signing any contract or agreement as required by the several statutes now in force for that purpose, or into any covenant, stipulation, or agreement to be comprised in any such contract or agreement, which shall have the effect, or be designed or intended to have the effect, of depriving such seaman, mariner, or other person, of the remedies by this act given for recovery of wages so due to him or them as aforesaid, shall be deprived of or hindered from using any method or means for recovery of wages, against any ship, or the masters or owners thereof, which immediately before the passing of this act he might, and which after the said 1st day of August he may make use of; and that in all cases where it shall or may be necessary, in resorting to the remedies by this act given for recovery of such wages as aforesaid, that the agreement or agreements in writing aforesaid should be produced before such justice or justices as aforesaid, no obligation shall be on any seaman, mariner, or other person as aforesaid, to produce the same, but such obligation shall lie on the master or commander, or other person having the charge or command, or the owner or owners of the ship or vessel for which the wages shall be demanded; and no seaman or mariner shall fail in any complaint or proceeding before any justice or justices for recovery of wages for want of such agreement or agreements being produced, but shall and may proceed therein as if no such agreement in writing had been made.

Not to deprive seamen of any

IV. And be it further enacted, That nothing in this act contained

remedy which may now be resorted to.

shall extend, or be construed to extend, to deprive any seaman, mariner, or other person as aforesaid, of any remedy, means, or process which may now be resorted to or used against any ship or vessel, or the master, commander, or person, having the charge of such ship or vessel, or the owner or owners thereof, for the recovery of wages due for serving on board of any such ship or vessel.

Act not to extend to Scotland.

V. And be it further enacted, That nothing in this act contained shall extend, or be construed to extend, to that part of the United Kingdom of Great Britain and Ireland called Scotland.

Public act.

VI. And be it further enacted, That this act shall be deemed and taken to be a public act, and shall be judicially taken notice of as such by all judges, justices, and others whomsoever, without being specially pleaded.

Continuance of the act.

VII. And be it further enacted, That this act shall continue in force for seven years from the passing hereof.

The SCHEDULE referred to by this ACT.

to wit. } ON the day of in the year of our Lord One thousand eight hundred and before at in the county of *A. B.* and *C. D.* appeared personally, and produced themselves as sureties for the master of the ship and for the owners thereof; and, submitting themselves to the jurisdiction of the said Court of Admiralty of England, bound themselves, their heirs, executors, and administrators, for the said master and owners of the said ship, in the sum of each of lawful money of Great Britain, unto *E. F.* a seaman having served on board the said ship, to answer the amount of such wages as shall be hereafter decreed by the said Court to be due to the said *E. F.*, according to the tenor of the act in that case made and provided; and, unless they shall so do, they hereby consent that execution shall issue forth against them, their heirs, executors, and administrators, goods and chattels, whereon the same shall be found, to the value of the sum abovementioned.

This bail was duly taken, acknowledged, and received at the time hereinbefore above written, before me the undersigned commissioner, [*or*, as the undersigned justice or justices of the peace] and I [*or*, we] do believe and consider the persons abovementioned sufficient security for the sum abovementioned.

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PART III.

MARITIME CONTRACTS.

43 Geo. III. c. 56.

An Act for regulating the Vessels carrying Passengers from the United Kingdom to His Majesty's Plantations and Settlements Abroad, or to Foreign Parts, with respect to the Number of such Passengers.—[*24th June*, 1803.]

WHEREAS, in various parts of the United Kingdom of Great Britain and Ireland, several persons have been seduced to leave their native country under false representations, and have suffered great hardship on shipboard for want of water and provisions, and other necessaries, and of proper accommodation on their passage: And whereas it is expedient that no ship or vessel should be permitted to carry a greater number of passengers on long or distant voyages, either to His Majesty's colonies abroad or to foreign countries, than can be properly furnished with provisions, and sufficiently accommodated on the passage; and it is also expedient that proper security should be given for their being landed at the ports or places to which they may have contracted or agreed to be carried: May it therefore please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, That it shall not be lawful for any master or other person having or taking the charge or command of any British ship or vessel whatever, which shall clear out from any port or place in the United Kingdom of Great Britain and Ireland, from and after the 1st day of July, 1803, to have on board, at or after being cleared out, at any one time, or to convey, carry, or transport, from any place or places in the said United Kingdom to any parts beyond sea, in any such ship or vessel, a greater number of persons, whether adults or children, including the crew, than in the proportion of one person for every two tons of the burthen of such ship or vessel; and every such ship or vessel shall be deemed and taken to be of such tonnage or burthen as is described and set forth in the respective certificate of the registry of each and every such ship or vessel, granted in pursuance of the several acts in force in Great Britain and Ireland respectively relating to such certificates; and if any such ship or vessel shall be partly laden with goods, wares, or merchandize, then it shall not be lawful for the master or other person having the command or charge of such ship or vessel, to receive or take on board a greater number of per-

From July 1, 1803, no master of any British vessel from any place in the United Kingdom, shall carry to any parts beyond sea a greater number of persons than one for every two tons' burthen: and if any part be laden with goods, then in that proportion for the part unladen, &c.

sons, including the crew, than in the proportion of one person for every two tons of that part of such ship or vessel remaining unladen; and such goods, wares, or merchandize with which such vessel may be partly laden, shall, at the sight and under the direction of the collector or comptroller, or other officer of the customs, at the port or place where such goods, wares, or merchandize shall be taken on board, be stowed and disposed of in such manner as to leave good, sufficient, and wholesome accommodation for the proportion of persons hereby allowed in such case to be received on board.

If the master shall take on board, or if he or the owners shall engage to take on board more than allowed, they shall forfeit 50*l.* for each person, and the vessel shall be detained till the penalty be paid.

II. And be it further enacted, That if any master or other person having or taking the charge or command of any such ship or vessel shall take on board, or if he, or the owner or owners of any such ship or vessel, shall engage to take on board a greater number of persons than in the proportion allowed by this act, such master or other person as aforesaid shall forfeit and pay the sum of fifty pounds for each and every such person exceeding in number the proportion hereinbefore limited; and moreover every such ship or vessel so having on board, conveying, carrying, or transporting, one or more person or persons beyond the proportion hereinbefore limited, shall be seized and detained by the collector, comptroller, surveyor, or officer of the customs, until such penalty or penalties shall be satisfied and paid, or until such master or other person, or the owner or owners of such ship or vessel, shall give good and sufficient bail for the payment thereof.

Vessels bound to North America shall be stored with certain quantities of provisions and water.

Penalty for not giving to each person his daily allowance.

Penalty for demanding a clearance for vessels not properly stored.

III. And be it further enacted, That every such ship or vessel bound to any port or place in North America shall be stored and furnished with at least twelve weeks' provisions and good and wholesome water, sufficient to afford an allowance per day during the voyage, of not less than half a pound of meat, one pound and a half of bread, biscuit, or oatmeal, with half a pint of melasses, and one gallon of water, to each and every person on board, whether adult or child; and the master of or other person having or taking the command of such ship or vessel, is hereby directed and enjoined to give out to each and every person on board at least the allowance herein directed each and every day of the voyage, under the pain of twenty pounds of lawful money aforesaid for each neglect or omission; and any person demanding a clearance for any such ship or vessel which shall not be stored with provisions and water in manner herein directed shall forfeit and pay the sum of fifty pounds for each and every person for whom there shall not be a quantity of provisions and water sufficient to afford the allowance herein directed.

Before receiving a clearance, a muster roll shall be delivered to the officer of the customs.

IV. And be it further enacted, That, before receiving a clearance or sufferance for any such ship or vessel, the master or other person having or taking the charge or command thereof shall deliver to the officer of the customs from whom such clearance or sufferance shall be demanded a muster roll, distinguishing the passengers from the crew, and specifying the names, age, and sex of the persons received or to be received on board, and the conditions upon which persons severally have been or are to be received on board, and the place or places to which such persons have severally contracted to be carried or conveyed; and every person delivering

Penalty for de-

a false muster roll shall forfeit and pay for every offence the sum of fifty pounds for each person omitted, or falsely stated or described therein; and it shall and may be lawful for the collector, comptroller, or surveyor of the customs of the port or place at which any such ship or vessel shall be cleared out, or in the absence of such collector, comptroller, and surveyor, the resident officer of the customs at the port, together with any one of His Majesty's justices of the peace or other magistrate, if such justice or magistrate can be found at such port or place, or within a convenient distance thereof; and such collector or comptroller, or such resident officer, together with such justice or magistrate, is hereby directed and required to muster the passengers and crew on board every such ship or vessel immediately before sailing, and to compare the persons found on board with the persons specified and described in the said muster roll delivered by such master or other person aforesaid, and to search and inspect every such ship or vessel; and if it shall appear that a false muster roll has been delivered, or if more persons shall be found on board than in the proportion herein allowed, or if the ship or vessel shall not be stored and provided with provisions and water sufficient to afford the allowance herein directed, then it shall be lawful for such collector or comptroller of the customs, or the principal officer of the customs, together with any such justice or other magistrate, to seize and detain such ship or vessel, and the master or other person having or taking the charge or command thereof, until he or the owner or owners of such ship or vessel shall find good and sufficient bail, to the amount of the penalties hereby imposed for exceeding the proportion of persons to be received on board, as herein before limited, and for demanding a clearance for any such ship or vessel without being stored with provisions and water in manner herein directed, and for delivering a false muster roll; and no clearance shall be given by any officer of the customs, until the said collector or comptroller, surveyor or principal officer of the customs, together with such justice or magistrate, shall have mustered the persons on board, and shall have searched and inspected the ship or vessel, and provisions and water, in manner herein directed; and if upon such inspection the regulations of this act shall be found to have been duly complied with, a copy of the said muster roll so delivered as aforesaid shall be certified by such collector or comptroller, or principal officer of the customs aforesaid, to be delivered to such master or other person aforesaid, and shall be preserved by him on board such ship or vessel; and the original muster roll delivered by such master or other person as aforesaid shall remain and be preserved at the custom-house where the clearance or sufferance is granted.

livering a false muster.

Officer of the customs, with a justice, shall muster the passengers and men before sailing, and for any deviations from the provisions of this act may detain the vessels till bail for the penalties be found.

No clearance shall be given until the persons be mustered, &c. and if the regulations shall have been complied with, a certified copy of the muster shall be delivered to the master, and the original shall be preserved at the custom-house.

V. Provided always, and be it enacted, That if upon any such muster, or otherwise, any passenger, or person who has entered into any contract or agreement for such voyage (other than the crew of such ship or vessel,) shall signify to such collector or comptroller, or other officer of the customs, or to any justice of the peace or other magistrate, that he or she is desirous of being relanded, or of not proceeding on any such voyage, it shall and

If any person, other than the crew, shall be desirous of not proceeding on the voyage, he shall be taken out of the vessel.

may be lawful to and for such collector, comptroller, or other officer of the customs, and such justice of the peace or other magistrate, and they are hereby empowered and required to take such person out of the ship or vessel; and it shall be lawful to and for such justice of the peace or magistrate, and they are hereby empowered and required, to set any such passenger free from his engagement, reserving to either party any legal claim which may arise in consequence thereof.

No person shall be received on board at any place where an officer of the customs is not stationed, on penalty of 500*l.*

VI. And be it further enacted, That no passenger shall be received on board of any such ship or vessel, unless at a port or place where a custom-house shall be established, or officers of the customs shall be stationed; and if any passengers shall be taken on board any such ship or vessel at any other port or place, the master or other person having or taking the charge or command of such ship or vessel shall forfeit and pay the sum of five hundred pounds; and such ship or vessel shall be seized and detained by any officer of the customs, until such penalty shall be paid, or such master or other person, or the owner or owners of such ship or vessel, shall find good and sufficient bail for the same.

No vessel carrying fifty persons shall be cleared out, unless provided with a surgeon, who shall produce a certificate of having passed his examination.

VII. And be it further enacted, That no such ship or vessel carrying fifty persons or upwards, including the crew, shall be cleared out, unless such ship or vessel shall be provided with a surgeon, who shall produce to the officer of the customs required to give the clearance or sufferance a certificate of his having passed his examination at Surgeons' Hall, in London, or at the Royal College of Surgeons of Edinburgh or Dublin.

Every surgeon shall have a medicine chest properly stored; and, before the vessel is cleared, shall specify the contents, and that they are good, upon oath, which shall be deposited in the custom-house.

VIII. And be it further enacted, That every such surgeon shall have a medicine chest properly stored with medicines, in proportion to the number of persons on board of such ship or vessel, of the kind and according to the assortment generally used and made for such voyages on board of His Majesty's ships of war; and before any such ship or vessel shall be allowed to be cleared out, every such surgeon shall specify upon oath, before the collector or comptroller, or other chief officer of the customs, at the port or place from whence such ship or vessel is to be cleared out, the contents of such medicine chest, and shall further make oath that the medicines are of good and proper quality, to the best of his knowledge and belief, which oath such collector, comptroller, or other chief officer of the customs, is hereby required and empowered to administer; and the affidavit of every such surgeon shall be deposited and preserved in the custom-house where the clearance or sufferance of such ship or vessel shall be granted; and the master or owner of every such ship or vessel failing to provide a medicine chest of the description abovementionod, and every such surgeon neglecting or refusing to make oath as herein directed, shall forfeit and pay the sum of fifty pounds.

Penalty on masters, &c. not providing a medicine chest, or surgeon not making oath.

Bedding shall be aired and vessel fumigated, on penalty of 20*l.*

IX. And be it further enacted, That the bedding of each and every passenger on board any such ship or vessel shall be aired by exposure upon the deck, when the weather will permit, once a day during the voyage, and such ship or vessel shall be fumigated with vinegar at least twice in every week during the voyage; and every such master or other person having or taking such charge or com-

mand shall forfeit and pay the sum of twenty pounds for each failure or neglect in airing the said bedding, or in fumigating the ship or vessel.

X. And be it further enacted, That no clearance or sufferance shall be granted to any such ship or vessel, unless the master or other person having or taking the charge or command thereof, and also the surgeon thereof, where a surgeon is by this act required, shall have given bond to His Majesty, his heirs and successors, such bond to be taken by and left in the hands of the collector or comptroller, or other principal officer of the customs at the port or place from whence such ship or vessel shall be cleared out, in the sum of one hundred pounds, with condition that such master or other person having such charge or command as aforesaid, and such surgeon, where a surgeon is required, shall severally keep a regular and true journal, containing an account of the greatest number of persons which shall have been on board of such ship or vessel at the time of her departure, and at any time during her voyage, and until her arrival at the port of her destination, and of the provisions and water on board, and of the delivery of the daily allowances thereof in manner herein directed, and of the airing of bedding, and of the fumigating the ship or vessel, and of the deaths of any of the passengers or crew of the said ship or vessel, and of the cause thereof, during the voyage, from the first departure of the said ship or vessel, to her arrival at her port of destination; and such master or other person having or taking such charge or command as aforesaid, and such surgeon, shall deliver such journals to the collector or other officer as aforesaid, at the first port of the United Kingdom where such ship or vessel shall arrive after returning from such port of destination, and shall severally make oath to the truth of their respective journals, to the best of their knowledge and belief, before such collector or other officer as aforesaid, who is hereby authorised and required to administer the said oath; and such collector or other officer as aforesaid shall deliver to such master or other person as aforesaid and to such surgeon respectively, copies of the oaths of such master or other person as aforesaid, and such surgeon, and also of the said journals respectively, which copies shall severally be attested as true copies, under the hand of such collector or other officer as aforesaid; and duplicates of the said copies, attested in like manner, shall be transmitted by the said collector or other officer aforesaid to the commissioners of His Majesty's customs in London, Edinburgh, or Dublin respectively, according as such journal shall be delivered and such oath shall be made, in England, Scotland, or Ireland; and if such master or other person aforesaid, or surgeon, shall act contrary hereto, such master or other person, and surgeon, shall, for each and every such offence, severally forfeit and pay the sum of one hundred pounds.

No clearance shall be granted, unless the master and surgeon give bond to keep journals during the voyage, containing certain particulars.

Master and surgeon shall deliver the journals to the officer at the port of arrival on return from the voyage, and shall swear to the truth thereof; and the officer shall deliver to them copies of their oaths and journals, and transmit duplicates to the commissioners of the customs:

Masters or surgeons acting contrary hereto shall forfeit 100*l.*

XI. And be it further enacted, That it shall not be lawful for any master or other person taking or having the charge or command of any ship or vessel, other than a British ship or vessel, owned, navigated, and registered according to law, clearing out from any port or place in the United Kingdom aforesaid, from and after the said 1st day of July, 1803, to have or take on board a

No master of any other than a British vessel clearing out after July 1, 1803, shall have on board more than one

person for every five tons' burthen, on penalty of 50*l.* for each beyond that proportion.

greater number of persons, including the crew, than in the proportion of one person for every five tons of the burthen of such ship or vessel; and every such ship or vessel shall be deemed and taken to be of such tonnage or burthen as shall be ascertained by the oath of the master or other person having or taking the charge or command thereof, taken before the collector or other chief officer of the customs, at the port from whence such ship or vessel shall be cleared out, which oath the said collector or chief officer is hereby authorised and required to administer; and it shall and may be lawful for such collector or chief officer to muster the passengers and crew, and to search and inspect every such ship or vessel; and, if more persons shall be found on board than in the proportion herein allowed, every such master or other person as aforesaid shall forfeit and pay the sum of fifty pounds for every person so taken on board beyond the proportion herein allowed, one moiety whereof shall go to His Majesty, his heirs or successors, and the other half to such collector or other officer aforesaid, who is hereby empowered to seize and detain such ship or vessel, until such penalties shall be paid.

Application of penalty.

Act not to extend to certain vessels.

XII. Provided always, and be it enacted, That nothing in this act contained shall extend, or be deemed or construed to extend, to ships or vessels in the service of His Majesty, or of His Majesty's postmaster-general, or of the customs and excise in Great Britain and Ireland respectively, or of the East India Company.

Penalty on masters for relanding provisions or water;

XIII. And be it further enacted, That if, after any such ship or vessel shall have been cleared out, any master or other person having or taking the charge or command of any such ship or vessel, shall unship, reland, or permit or suffer to be unshipped or relanded, any provisions or water, such master or other person shall forfeit the sum of two hundred pounds.

but a proportion may be relanded, if any person shall be relanded.

XIV. Provided always, and be it enacted, That if any passenger or passengers who may be desirous not to proceed on such voyage, shall be relanded, or shall not proceed in the manner herein-before directed, then it shall and may be lawful for such master or other person aforesaid to unship or reland, under the inspection of the officer of the customs at the port or place from whence such ship or vessel shall be cleared out, a quantity of provisions and water not exceeding the proportion sufficient for the allowance of such passenger or passengers so relanded.

Commissioners of the customs shall prepare an abstract of this act to be hung up in every custom-house; and a copy thereof, and of the muster roll, shall be hung up in every vessel, on penalty of 20*l.*

XV. And be it further enacted, That an abstract of this act shall be prepared by and with the direction of the commissioners of His Majesty's customs in England, Scotland and Ireland respectively, and a copy thereof shall be hung up in the custom-house of every port of the United Kingdom, and a copy thereof, and a copy also of the said muster roll, shall be hung up and affixed to the most public place of every ship or vessel carrying passengers under the regulations of this act; and the master or other person having or taking the charge or command of such ship or vessel shall cause the said copies to be renewed, so that the same may be at all times accessible to every person on board of such ship or vessel, upon pain that every such master or other person having or taking the charge or command of every such ship or vessel, who shall neglect to affix

or renew the same, shall for every such offence forfeit the sum of twenty pounds.

Officers commanding ships of war, or revenue cutters, shall call for muster rolls, and search ships, and, if the provisions of this act have not been complied with, may seize and send them to some port.

XVI. And be it further enacted, That all captains and officers commanding His Majesty's ships of war or revenue cutters, who shall meet any such ships or vessels at sea, shall and may, and they are hereby empowered and required to call for the said muster roll and to search such ship or vessel; and if any more or other persons shall be found on board than are specified in such muster roll, or if a quantity of provisions shall not be found on board sufficient to afford to each person the daily allowances herein directed during the remainder of the voyage, unless it shall appear that such vessel has been detained on her passage, after leaving the port or place at which the passengers embarked, beyond the time for which the quantity of provisions hereby required are directed to be provided, or if such allowances shall not have been dealt out in the preceding part of the voyage in manner herein directed; then in either of these cases such captains or officers may seize and detain such ship or vessel, until good and sufficient bail shall be given at the port or place to which such ship or vessel may be carried by the order and direction of such captains or officers, who are hereby empowered to put hands on board to take charge of her for that purpose; and if the state of such ship or vessel, and the provisions on board thereof, will permit, it shall and may be lawful for such captains or officers to send back such ship or vessel to the port from whence she was cleared out, or otherwise to carry such ship or vessel into such port as the state of the provisions on board, or the supply which such captains or officers can afford, will permit.

No such vessel to be cleared out, unless bond be given that the vessel is seaworthy, and that the passengers shall be delivered at the port contracted for.

XVII. And be it further enacted, That no such ship or vessel shall be cleared out, unless the owner or owners, or the master or other person having or taking the charge or command thereof, shall have given bond to His Majesty, his heirs and successors, such bond to be taken by and left in the hands of the collector or comptroller, or other proper officer of the customs in the port or place from whence such ship or vessel shall be cleared out, in an amount equal to the sum of twenty pounds for each passenger on board such ship or vessel, with condition that such vessel is seaworthy, and that every such passenger, if alive, shall be landed at the port or ports to which such passenger shall have contracted to be conveyed.

Penalty on officers of the customs signing sufferances contrary to this act.

XVIII. And be it further enacted, That if any officers of the customs shall knowingly sign or give out any clearance or sufferance for any such ship or vessel, contrary to the regulations of this act, every such officer shall forfeit and lose his employment, and shall also forfeit and pay the sum of fifty pounds.

How penalties shall be paid and recovered.

XIX. And be it further enacted, That all sum and sums of money, penalties and forfeitures in this act mentioned and contained, shall be calculated and paid, and payable within Great Britain in lawful money of Great Britain, and within Ireland in Irish currency; and that any penalty or forfeiture inflicted by this act may be prosecuted, sued for, and recovered by action of debt, bill, plaint, or information in any of His Majesty's Courts of Record at Westminster or Dublin, or in the Court of Exchequer, or in

the Court of Session in Scotland, in the name of His Majesty's Attorney-General for England or Ireland, or His Majesty's Advocate for Scotland respectively, or in the name of any person or persons whatsoever, wherein no essoign, protection, privilege, wager of law, or more than one imparlance, shall be allowed; and in every action or suit the person against whom judgment shall be given for any penalty or forfeiture under this act, shall pay double costs of suit; and every such action or suit shall and may be brought at any time within three years after the offence committed, and not afterwards; and one moiety of every penalty to be recovered by virtue of this act shall go and be applied to His Majesty, his heirs or successors, and the other moiety to the use of such person or persons as shall first sue for the same, after deducting the charges of prosecution from the whole.

Double costs.

Suits for penalties may be brought within three years.

Application of penalties.

Penalty on persons taking false oaths, or suborning others to take them.

XX. And be it further enacted, That if any person taking any oath by this act authorised or required to be taken, shall thereby commit wilful perjury, or if any person shall unlawfully procure or suborn any person to take any oath by this act authorised or required to be taken, whereby such person shall commit wilful perjury, every such person shall incur and suffer the like pains and penalties as are by law inflicted upon persons committing wilful and corrupt perjury, or subornation of perjury, in Great Britain and Ireland respectively.

Limitation of actions for things done in pursuance of this act.

XXI. And be it further enacted, That if any action or suit shall be brought or commenced against any person or persons for any thing done in pursuance of this act, then and in every such case the said action or suit shall be commenced within three calendar months after the fact committed, and not afterwards, and shall be brought in the county or place where the cause of action shall arise, and not elsewhere, and that the defendant or defendants in such action or suit to be brought may plead the general issue, and give this act, and the special matter in evidence at any trial to be had thereupon, and that the same was done in pursuance and by the authority of this act; and if it shall appear to be so done, or if any such action or suit shall be brought after the time before limited for bringing the same, or shall be brought in any other county, city, or place than as aforesaid, then and in every such case the jury shall find for the defendant or defendants; and upon such verdict, or if the plaintiff or plaintiffs shall become nonsuited, or discontinue his, her, or their action, or if a verdict shall pass against the plaintiff or plaintiffs, or upon demurrer judgment shall be given against such plaintiff or plaintiffs, the defendant or defendants shall and may recover double costs, and have the like remedy for the same as any defendant or defendants hath or have for costs of suit in other cases by law.

General issue.

Double costs.

Act not to alter laws for restrictions or regulations of artificers and others from going to parts beyond the seas.

XXII. Provided always, and be it enacted, That nothing in this act contained shall extend, or be construed to extend, to repeal, alter, or affect, any law, statute, usage, or custom now in force in the United Kingdom, or within Great Britain or Ireland respectively, for the restriction or regulation of artificers and others, from or in goirg or passing from any part of the United Kingdom to parts beyond the seas, or to regulate the ships or vessels carrying and conveying such artificers or other persons whatsoever, or the

masters or commanders, or persons having the charge of such ships or vessels, but that all such laws, usages, and customs, shall remain in full force and effect, to all intents and purposes, as if this act had not been had or made.

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12 Anne, stat. 2. c. 18.

An Act for the Preserving all such Ships, and Goods thereof, which shall happen to be forced on Shore, or Stranded upon the Coasts of this Kingdom, or any other of Her Majesty's Dominions.

WHEREAS by an act made in the third year of the reign of king Edward the first, concerning wrecks at sea, it is enacted, That where a man, a dog, or a cat, escape quick out of the ship, that such ship, nor barge, nor any thing in them, shall be adjudged a wreck, but the goods shall be saved, and kept by view of the sheriff, coroner, or the king's bailiff, and delivered into the hands of such as are of the town where the goods were found; so that if any sue for those goods, and after prove that they were his, or perished within his keeping, within a year and a day, they shall be restored to him, without delay, and if not, they shall remain to the king, or to such others to whom wreck belongeth; and he that otherwise doth, and thereof be attainted, shall be awarded to prison, and make fine at the king's will: And whereas by another act made in the fourth year of the reign of the said king Edward the first, intituled, *De Officio Coronatoris*, concerning the wreck of the sea, it is enacted, that wheresoever it be found, if any lay hands of it, he shall be attached by sufficient pledges, and the price of the wreck shall be valued, and delivered to the town: And whereas great complaints have been made by several merchants, as well Her Majesty's subjects, as foreigners trading to and from this kingdom, that many ships of trade, after all their dangers at sea escaped, have unfortunately, near home, run on shore, or been stranded on the coasts thereof; and that such ships have been barbarously plundered by Her Majesty's subjects, and their cargoes embezzled, and when any part thereof has been saved, it has been swallowed up by exorbitant demands for salvage, to the great loss of Her Majesty's revenue, and to the much greater damage of Her Majesty's trading subjects: for remedy whereof be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, that the sheriffs, justices of the peace of every county, or county of a city or town, and also all mayors, bailiffs, and other head-officers of corporations and port-towns near adjoining to the sea, and all constables, headboroughs, tythingmen, and officers of the customs in all and every such places, shall, upon application made to them, or any of them, by

Preamble, reciting 3 Ed. 1.

4 Edward 1.

Sheriffs, mayors, &c. and customhouse officers to summon men to assist ships in distress.

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or on the behalf of any commander or chief officer of any ship or vessel of any of Her Majesty's subjects, or others, being in danger of being stranded or run on shore, or being stranded or run on shore, are hereby empowered and required to command the constables of the several ports within Her Majesty's dominions, nearest to the sea-coasts where any such ship or vessel shall be in danger, as aforesaid, to summon and call together as many men as shall be thought necessary to the assistance and for the preservation of such ship or vessel, so in distress, as aforesaid, and their cargoes; and that if there shall be any ship or vessel, either man of war or merchants' ship, belonging to Her Majesty, or any of her subjects, riding at anchor near the place where such ship or vessel is in distress or danger, as aforesaid, the officers of the customs, and constables above-mentioned, or any of them, are hereby empowered and required to demand of the superior officers of such ship or vessel, so riding at anchor, as aforesaid, assistance by their boats, and such hands as they can conveniently spare, for the said service and preservation of the said ship or vessel, so in distress, as aforesaid; and that in case such superior officer of such ship or vessel, riding at anchor, as aforesaid, shall refuse or neglect to give such assistance, he shall forfeit for the same the sum of one hundred pounds, to be recovered by the superior officer of the said ship or vessel, so in distress, as aforesaid, together with their costs of suit, in any of Her Majesty's courts of record, by action, debt, bill, plaint, or information, wherein no essoign, wager of law, or protection, shall be allowed.

All ships to assist,

on forfeiture of 100*l*.

And for the encouragement of such persons as shall give their assistance to such ships or vessels, so in distress, as aforesaid, be it further enacted, That the said collectors of the customs, and the master or commanding officer of any ships or vessels, and all others who shall act or be employed in the preserving of any such ship or vessel in distress, as aforesaid, or their cargoes, shall within thirty days after the service performed be paid a reasonable reward for the same, by the commander, master, or other superior officer, mariners, or owners of the ship or vessel, so in distress, as aforesaid, or by the merchant whose ship, vessel, or goods shall be so saved, as aforesaid; and in default thereof, the said ship, vessel, or goods, so saved, as aforesaid, shall remain in the custody of such officer of the customs, or his deputy, until such time that all charges shall be paid, and until the said officer of the customs, or his deputy, and the said master or other officer of the ship or vessel, and all others so employed, as aforesaid, shall be reasonably gratified for their said assistance and trouble, or good security given for that purpose, to the satisfaction of the several parties that are to receive the same; and that in case after such salvage the commander or other superior officer, mariners, or owners of such ship or vessel, so saved, as aforesaid, or merchant whose goods shall be so saved, as aforesaid, shall disagree with the said officer of the customs, or his deputy, touching the monies deserved by any of the persons so employed, as aforesaid, it shall be lawful for the commander of such ship or vessel so saved, or the owner of the goods, or the merchant interested therein, and also for the said officer of the customs, or his deputy, to nominate three of the

Reasonable salvage to be made.

Three justices to adjust the *quantum*.

neighbouring justices of the peace, who shall thereupon adjust the *quantum* of the monies or gratuities to be paid to the several persons acting or being employed in the salvage of the said ship, vessel, or goods, and such adjustments shall be binding to all parties, and shall be recoverable in an action at law to be brought in any of Her Majesty's courts of record, by the respective persons to whom the same shall be allotted by the said justices of peace; and in case it shall happen, that no person shall appear to make his claim to all or any the goods that shall be saved, that then and in such case the chief officer of the customs of the nearest port to the place where the said ship or vessel was so in distress, as aforesaid, shall apply to three of the nearest justices of peace, who shall put him or some other responsible person in possession of the said goods, such justices of peace taking an account in writing of the said goods, to be signed by such officer of the customs; and if the said goods shall not be legally claimed within the space of twelve months next ensuing, by the rightful owner thereof, then public sale shall be made thereof, and if perishable goods, forthwith to be sold, and after all charges deducted, the residue of the monies arising by such sale, with a fair and just account of the whole, shall be transmitted to Her Majesty's exchequer, there to remain for the benefit of the rightful owner when appearing; who, upon affidavit or other proof made of his or their right or property thereto, to the satisfaction of one of the barons of the coif of the Exchequer, shall, upon his order, receive the same out of the Exchequer.

Goods not claimed in 12 months to be sold,

and the monies transmitted into the Exchequer, &c.

And it is hereby also enacted, That if any person or persons whatsoever, besides those empowered by the said officer of the customs, or his deputy, and the constables, as aforesaid, shall enter or endeavour to enter on board any such ship or vessel, so in distress, as aforesaid, without the leave or consent of the commander, or other superior officer of the said ship, or of the said officer of the customs, or his deputy, or of the said constable, or some or one of them employed for the service and preservation of the said ship or vessel, as aforesaid; or in case any person shall molest him, them, or any of them, in the saving of the said ship, vessel, or goods, or shall endeavour to impede or hinder the saving of any such ship, vessel, or goods, or when any such goods are saved, shall take out or deface the marks of any such goods, before the same shall be taken down in a book or books for that purpose, provided by the commander or ruling officer, and the first officer of the customs, as aforesaid, such person or persons shall, within the space of twenty days, make double satisfaction to the party grieved, at the discretion of the two next justices of peace, or in default thereof shall by such justices of peace be sent to the next house of correction, where he shall continue and be employed in hard labour by the space of twelve months then next ensuing; And that it shall be lawful for any commander or superior officer of the said ship or vessel, so in distress, as aforesaid, or for the said officer of the customs, or constables on board the same ship or vessel, to repel by force any such person or persons as shall, without such leave or consent from the said commander or superior officer, or the said officer of the customs, or his deputy, or

Persons entering ship without leave,

or hindering the saving the ship, to make double satisfaction.

Masters may repel pressers into the ship.

such constables, as aforesaid, press on board the said ship or vessel, so in distress, as aforesaid, and thereby molest them in the preservation of the said ship or vessel, so in distress, as aforesaid.

Goods carried off, to be immediately delivered up.

And it is hereby likewise enacted, That in case any goods shall be found upon any person or persons, that were stolen or carried off from any such ship or vessel, so in distress, as aforesaid, he, she, or they, on whom such goods shall be found, shall immediately, upon demand, deliver the same to the owner thereof, or to such person by such owner authorised to receive the same; or, in default thereof, shall be liable to pay treble the value of such goods, to be recovered by such owner in an action at law to be brought for the same.

Penalty treble the value.

Making holes in the ship, &c. felony.

And it is hereby moreover enacted, That if any person or persons shall make, or be assisting in the making, any hole in the bottom, side, or any other part of any ship or vessel, so in distress, as aforesaid, or shall steal any pump belonging to any ship or vessel, so in distress, as aforesaid, or shall be aiding or abetting in the stealing such pump, as aforesaid, or shall wilfully do any thing tending to the immediate loss or destruction of such ship or vessel, such person or persons shall be and are hereby made guilty of felony, without any benefit of his, her, or their clergy.

General issue.

And be it further enacted by the authority aforesaid, That if any action, suit, or information, shall be commenced or prosecuted against any person or persons, for any thing that he or they shall do, or cause to be done, in pursuance of this act, and executing any of the powers and authorities, or any of the orders or directions therein mentioned, all and every person and persons, so sued in any court whatsoever, shall and may plead the general issue, and give this act and the special matter in evidence; and if in any such suit the plaintiff or prosecutor shall become nonsuit, or forbear prosecution, or discontinue the suit, or if a verdict shall pass against him, or judgment be given against him upon a demurrer, then in any of the said cases the defendant or defendants shall recover full costs, for which he and they shall have the like remedy, as where costs by law are awarded; and this act shall be taken and allowed in all courts within this kingdom as a public act; and all judges and justices are hereby required to take notice thereof as such, without special pleading of the same.

Public act.

Custom-house officer abusing his trust, to forfeit treble damages, and disabled.

Provided nevertheless, if any officer of the customs, or his deputy, so empowered, as above, shall, by fraud or wilful neglect, abuse the trust so hereby reposed in him, as aforesaid, and shall be convicted thereof in due form of law, such officer, or his deputy, shall respectively forfeit treble damages to the party grieved, to be recovered in any action or suit to be brought in any Court of Record, and shall from thenceforth be fully disabled and rendered incapable of the same, or any other employment relating to the said customs.

Act to commence 1st Aug. 1714, and to be read four times in the year on Sundays in sea-port towns.

And it is hereby further enacted, That this act, and the several clauses herein contained, shall take effect from and after the 1st day of August, in the year of our Lord, 1714; and that, for the better observing of the same, this act shall be read four times in the year in all the parish-churches and chapels of every sea-port town, and upon the sea-coast in this kingdom, upon the Sundays next

before Michaelmas-day, Christmas-day, Lady-day, and Midsummer-day in the morning, immediately after the prayers, and before the sermon.

Provided always, and it is hereby enacted, That neither this act, nor any thing herein contained, shall any ways extend to deprive, or any ways prejudice her royal Majesty, her heirs or successors, or any claiming under them, or any of them, or any patentee or grantee of the crown, or any lord or lords of any manor or manors, or other person whatsoever, of or in relation to any right which they or any of them respectively have, or shall have, or lawfully may claim to any wreck or wrecks, or any goods that are or shall be flotsam, jetsam, or lagan, but that such respective rights shall be enjoyed in as full, ample, and beneficial a manner, in every respect, as if this act had never been made. Claims to wrecks saved.

Provided, that this act shall continue in force for the space of three years, and from thence to the end of the next session of parliament, and no longer. Continuation.

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48 Geo. III. c. 130.

An Act for preventing the various Frauds and Depredations committed on Merchants, Ship-owners, and Underwriters, by Boatmen and others, within the Jurisdiction of the Cinque Ports; and also for remedying certain Defects relative to the adjustment of Salvage, under a Statute made in the Twelfth year of the Reign of her late Majesty Queen Anne. [30th June, 1808.]

WHEREAS it is expedient that a stop should be put to the fraudulent practices of boatmen, pilots, hovellers, and others, resident within the jurisdiction of the cinque ports, who have for many years past, upon sundry occasions, committed various depredations on ships in distress or otherwise, and taken to themselves and converted to their own use anchors, cables, and other property which may have been lost by accident, and made the masters and owners of such ships pay exorbitant demands for assistance, to the great injury of the merchants and others concerned in shipping, and also to the detriment of the lord warden of the cinque ports, whose rights have been unjustly invaded: And whereas, by an act of parliament passed in the third year of the reign of His Majesty King George the First, power is given to certain commissioners, to be appointed by the lord warden of the cinque ports for the time being, to determine, within the space of twelve hours, all differences relating to salvage between the master of any vessel and the person or persons who shall bring any anchor or cable ashore from which any ship or vessel shall have been previously forced by stress of weather: And whereas by several other acts, passed in the tenth year of his said Majesty's reign, and in the eighth and

twenty-third years of his late Majesty's reign, the said act is further continued; and by other acts of his present Majesty the same was continued up to the 26th day of March, 1806, and from thence to the end of the then next session of parliament; and by an act, passed on the 8th day of August, 1807, the said several recited acts were revived and continued for seven years longer: And whereas it is found expedient that the commissioners of salvage appointed by the lord warden should have further powers granted them, for the purpose of deciding in all other cases of services rendered to shipping not provided for by the said former acts: May it therefore please your Majesty, that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, that from and after the 1st day of August, 1808, it shall and may be lawful for the lord warden of the cinque ports for the time being to nominate and appoint by any instrument or instruments, under his hand and seal, three or more substantial persons in each of the cinque ports, two ancient towns and their members, to adjust and determine any difference relative to salvage (which may arise) between the master of any vessel and the person or persons bringing such cables and anchors ashore; and in case any ship or vessel shall be either forced or cut from her cables and anchors by extremity of weather, or by any other accident whatever, and leave the same in any roadstead or other place within the jurisdiction of the cinque ports, two ancient towns, and their members, and the salvage cannot be adjusted between the persons concerned, then the same shall be determined by any three or more of the said persons so to be appointed as aforesaid, within the space of twenty-four hours after such difference shall be referred to them for their determination thereof; any usage or custom to the contrary in any wise notwithstanding: Provided always, that such commissioners shall immediately after their nomination proceed to elect some fit and proper person who shall be a notary or master extraordinary in chancery, as their secretary or register, except to the port of Dover, where the register for the time being of the Court of Admiralty of the cinque ports shall be the register, and which secretary or register shall enter in a book to be kept for that purpose all the proceedings of such commissioners, and also a copy of the awards which they shall from time to time make: but such election of secretaries or registers shall be subject to the approbation of the lord warden for the time being.

Lord warden to appoint commissioners.

Secretary or register to be appointed.

Commissioners to have power to settle all differences which may arise.

II. And be it further enacted by the authority aforesaid, That it shall be lawful for the said commissioners, to be appointed as aforesaid, to decide on all claims and demands whatever which shall or may, after the 1st day of August next, be made by pilots, boatmen, and other persons for services of any sort or description rendered to any ship or vessel, as well for carrying off from the shore to such ship or vessel any anchors, cables, or other stores from any part or port of the coast of Kent, Sussex, Essex, or the isle of Thanet, within the jurisdiction aforesaid, as for the conducting and conveying such ships and vessels from the Downs, and other bays and roadsteads on the coast of Kent, Sussex, and Essex, and the

island of Thanet, or from the sea, or any other place to Ramsgate, Dover, or any other harbour, port, or place on the said coasts, within the jurisdiction aforesaid, or for the saving and preserving within the jurisdiction aforesaid any goods or merchandise wrecked, stranded, or cast away from any ship or vessel, the master or owners thereof or their agents being present at the place where the commissioners shall be sitting, and that the said commissioners shall have full power and authority to hear and determine on all cases whatever of services rendered by pilots, boatmen, and others, to shipping within the jurisdiction aforesaid, whether such ships or vessels shall be in distress or not; and that it shall be lawful for the said commissioners, whenever they see occasion, to examine the parties or their witnesses upon their oaths, which oaths shall and may be administered by the said secretary or register.

III. And be it further enacted by the authority aforesaid, That it shall be lawful for the commissioners so to be appointed, and their secretary or register as aforesaid, who shall decide on any such claims or demands as aforesaid, to demand and receive of and from the owners of such ships or vessels, or the proprietors of any such goods or merchandizes against whom any pilot, boatman, or other person shall make any claim or demand for services of any sort rendered to such ships or vessels, or for the sole saving and preserving any goods or merchandizes wrecked, stranded, or cast away within the jurisdiction aforesaid; and such owners and proprietors are hereby required to pay to them such fee or reward for deciding on every such claim and demand as shall be adjudged to them in that behalf by the Lord Warden of the Cinque Ports for the time being.

Commissioners to be paid by the owners, &c. for their trouble, such fees as shall be allowed by the lord warden.

IV. Provided always, That no person to be appointed a commissioner by virtue of this act shall have power or authority to act in any other port or place than that in which he is resident; and that before such commissioners shall in any case proceed to act, they shall severally take the following oath before a magistrate or a Commissioner of the Court of King's Bench or Common Pleas, or a Master Extraordinary in Chancery; *viz.*

Proviso that no commissioner shall act out of the place where he is resident.

'I, *A. B.*, do swear, That I have not, neither will I, in any way, 'directly or indirectly, take or receive any fee, emolument, or 'reward, from any of the parties whose interests are referred to 'my decision (save and except such fee or reward as shall be al-'lowed by the lord warden to be paid to me by the ship-owners or 'proprietors of the cargo, or their agents;) and that I will not 'accept or receive any fee whatever from the persons claiming re-'ward or salvage; but that I will decide according to the best of 'my judgment on the evidence to be brought before me, without 'favour or affection to either party. So help me God.'

Oath of the commissioners.

V. And be it further enacted by the authority aforesaid, That in case the person or persons so claiming to be entitled to salvage or compensation for services rendered as aforesaid, or the party or parties who are to pay the same, or their agents, shall be dissatisfied with such award and decision of the commissioners, it shall and may be lawful for either of them respectively, within twenty-

Parties dissatisfied may appeal to the High Court of Admiralty, or the Admiralty of the Cinque Ports; but the

ship to be liberated on giving bail in double the amount of the award.

four hours after such award is made, but not afterwards, to declare to the commissioners his or their desire of obtaining the judgment of some competent Court of Admiralty respecting the said salvage or compensation as aforesaid; and thereupon the person or persons so claiming to be entitled to salvage shall forthwith be required by the commissioners to declare whether he or they will proceed in the Court of Admiralty of the Cinque Ports, or the High Court of Admiralty of England, and he or they shall so proceed within twenty days from the date of such award by taking out a monition against the adverse party; but in such case the said commissioners are hereby empowered and required to permit the said ship and her cargo, notwithstanding such declaration and proceeding, to depart on her voyage, or to deliver to the owners and proprietors, or their agents, any goods or merchandizes, respecting which any claim for salvage shall be made upon the owners or proprietors of the same, or their agents, giving good and sufficient bail in double the amount of the sum awarded, and which bail the said commissioners, or any of them, are and is hereby authorized to take and certify according to the form contained in the Schedule hereunto annexed, and to transmit the same without delay to the Court of Admiralty, in which the intention of proceeding shall be so declared, together with a true certificate in writing of the gross value of the whole ship and cargo, or other goods and merchandizes, respecting which salvage shall be claimed; and also an official copy of such proceedings and awards certified by the said secretary or register; and the same shall be admitted by such Court of Admiralty as evidence in the cause.

Persons cutting away or defacing buoy ropes, &c. to be deemed guilty of felony.

VI. And be it further enacted by the authority aforesaid, That if any person or persons shall, from and after the said 1st day of August, 1808, wilfully cut away, cast adrift, remove, alter, deface, sink, or destroy, or shall do or commit any act, with intent and design to cut away, cast adrift, remove, alter, deface, sink, or destroy, or in any other way injure or conceal any buoy, buoy-rope, or mark belonging to any ship or vessel, or which may be attached to any anchor or cable belonging to any ship or vessel whatever, within the jurisdiction aforesaid, with intent thereby to defraud or injure any person or persons whatsoever, or body corporate, such person or persons so offending shall, on being convicted of such offence, be deemed and adjudged guilty of felony, and shall be transported for any term of years not exceeding fourteen years.

Anchors, &c. found within the jurisdiction to be deposited with the lord warden's officers within seven days;

VII. And be it further enacted by the authority aforesaid, That all anchors, cables, buoys, ropes, or other ships' stores, or materials of any sort or description whatever, which may have been parted with, cut from, or left by any ship or vessel in the Downs or elsewhere, within the jurisdiction aforesaid, whether the same shall be in distress or otherwise, and which shall have been weighed, swept for, or taken possession of by any pilots, boatmen, hovellers, or other persons, shall be by them delivered either at Ramsgate, Deal, or Dover, (three public places of deposit declared by this act for the reception of all such articles, or such other places as shall be declared by the lord warden) in the same state in which they are found, to the deputy or deputies

of the lord warden, or such other person as he shall authorise to receive the same; but if any such articles so found, weighed, swept for, or taken possession of, shall not be so delivered within seven days from the finding thereof, and shall afterwards be discovered in the possession, custody, or power of such pilots, boatmen, hovellers, or other person or persons, he, she, or they shall on conviction be adjudged and deemed guilty of receiving goods knowing them to have been stolen, and shall suffer the like punishment as if the same had been stolen on shore.

if not, persons receiving the same to be adjudged guilty of receiving stolen goods.

VIII. And be it further enacted by the authority aforesaid, That all merchandise or marine stores of every description, whether belonging to His Majesty or to any British subjects or foreigners, which may be preserved from any ship or vessel wrecked either on shore or on the Goodwin, or on any other sand or shoal, within the jurisdiction aforesaid, shall be landed and delivered at one of the three places of deposit belonging to the lord warden's deputies at Ramsgate, or Deal, or Dover, or such other place as shall be declared and appointed by the said lord warden for that purpose, whichever shall be most convenient or contiguous to the place where the loss occurs, within the space of seven days after the same shall have been preserved and taken possession of; and that if any person or persons who shall have preserved or taken possession of any such merchandise or marine stores within the jurisdiction aforesaid shall sell, dispose of, or otherwise make away with the same, or shall in any manner conceal, deface, take out, or obliterate the marks or numbers thereon, or alter the same in any manner with intent thereby, directly or indirectly, to prevent the discovery and identity of such articles by the owner or owners thereof, such person or persons shall be deemed and adjudged guilty of felony.

All wrecked merchandise and ship's stores to be also deposited with the lord warden's officers within seven days.

If sold, or marks defaced by the salvors, they the salvors to be adjudged guilty of felony.

IX. Provided always, and it is hereby enacted and declared, That nothing herein contained shall extend, or be construed to extend, to the preventing or restraining the serjeants, deputies, or any other officer of the lord warden, from seizing all such anchors, cables, buoys, buoy-ropes, or other ships' stores or materials as aforesaid, and likewise all such merchandise and marine stores as aforesaid, which he or they shall find concealed or attempted to be concealed within the jurisdiction aforesaid, or which he or they shall find in the possession of any person or persons who shall be conveying or in the act of preparing to convey the same out of the said jurisdiction, or from any place where the same shall have been landed within the said jurisdiction, to any other place within the same, other than to one of the said public places of deposit aforesaid; but it shall be lawful in all such cases for all and singular the officers aforesaid to seize the same, as well on shore as at sea, within the said jurisdiction, at any time before as well as after the expiration of the seven days aforesaid, and to take and carry the same to one of the said public places of deposit; any thing in this or in any other act, law, custom, or usage, to the contrary notwithstanding.

Officers of the lord warden may seize anchors, stores, &c. concealed within their jurisdiction, &c.

X. And be it further enacted by the authority aforesaid, That if any person or persons, within the jurisdiction aforesaid, shall knowingly, and with intent to defraud and injure the true owner or

Receivers to be subject to the same punishment as though

the goods had been stolen on shore.

owners thereof, purchase or receive any anchors, cables, ropes, or other ships' stores, or materials of any description whatever, or any merchandise or lading which may have been taken up, weighed, swept for, or taken possession of, whether the same shall have belonged to any ship or vessel in distress or otherwise, or whether the same shall have been preserved from any wreck, within the jurisdiction aforesaid, such person or persons shall, on conviction thereof, be deemed guilty of receiving stolen goods, knowing the same to be stolen, as if the same had been stolen on shore, and suffer the like punishment as for a misdemeanor at the common law, and be also liable to be transported for seven years in the discretion of the court before which he, she, or they shall be tried.

Lord warden's officers authorised to seize anchors, &c. taken up within the limits of the cinque ports.

XI. And whereas it frequently happens that anchors, cables, and other marine stores or merchandise, which have been weighed, swept for, or taken possession of, within the jurisdiction aforesaid, are for fraudulent purposes carried away to Rochester, London, Portsmouth, and other places, not within the jurisdiction aforesaid, and the officers of the lord warden cannot, by reason of such removal, recover the same; be it enacted by the authority aforesaid, That from and after the passing of this act it shall be lawful for the serjeants, deputies, or any other officer of the lord warden whenever the case shall happen, to seize such anchor, cable, or other marine stores or merchandise, out of the jurisdiction aforesaid, and there to take and carry away the same to some one of the aforesaid public places of deposit.

Pilots or boatmen advising masters of ships to cut their cables or buoy-ropes to be deemed guilty of felony.

XII. And be it further enacted by the authority aforesaid, That if any pilot, boatman, or other person or persons, within the jurisdiction aforesaid, shall at any time after the 1st day of August next, counsel, instruct, direct, advise, or procure any master or other person on board of any ship or vessel, within the jurisdiction aforesaid, whether such ship be at the time in distress or otherwise, to cut such ship's or vessel's cable or buoy-rope, or to do any other act whatever which shall or may tend to the destruction or wreck of such ship or vessel, with intent thereby to prejudice any owner or owners of such ship or vessel, or any owner or owners of any goods loaden on board the same, or any person or persons, body politic or corporate, that hath or have underwritten or shall underwrite any policy or policies of insurance upon such ship or vessel or on the freight thereof, or upon any goods loaden on board the same, the person or persons offending therein, being thereof lawfully convicted, shall be deemed and adjudged guilty of felony, and be liable to be transported for any period of time not exceeding fourteen years.

Dealers in ship-stores to have their names painted on their storehouses, and not to cut up any cordage without a permit from the lord warden's deputies.

XIII. And be it further enacted by the authority aforesaid, That all persons who shall trade or deal in buying and selling anchors, cables, sails, old junk or paper stuff, old iron, or marine stores of any kind or description, within the jurisdiction aforesaid, shall have their names, with the words Dealer in Marine Stores painted distinctly, in letters of not less than six inches in length, upon the front of all their storehouses, warehouses, and other depots for such goods; and, in default of their so doing, they shall on conviction before any person or persons duly authorised to act as a magistrate or magistrates within the limits aforesaid, forfeit and

pay any sum not exceeding twenty pounds, nor less than ten pounds; one half of which penalties shall be paid to the informer, and the other moiety to the poor of the parish where such offence shall be committed: And further, That it shall not be lawful for such dealers or traders to cut up any cables, or part of the same, or to uncant, untwine, or unlay the same, or cordage of any description into junk or paper stuff, nor any woulding, wounding, or worming on any cable-matting on the same or on rigging, on any pretence whatsoever, without first obtaining a permit from the lord warden's deputies, or one of them, which permit shall not be granted unless an affidavit shall have been first made before some one of the persons duly authorised to act as magistrates, within the limits of the cinque ports, two ancient towns, and their members, and shall have been delivered to and left with the person granting such permit; in which affidavit there shall be sworn that the cable and cordage so intended to be cut up had been purchased fairly and without fraud by the party so intending to cut up the same, and without any knowledge or suspicion on his or her part that the same had been or were dishonestly come by; and in which affidavit shall also be specified the particular quality and description of such cable or cordage, and the name or names of the seller or sellers thereof, which affidavit shall be recited and set forth at length in the permit thereupon granted.

No cables, &c. to be cut up without a permit from one of lord warden's deputies.

XIV. And for the further and more effectual prevention of fraud in this respect, be it enacted, That all dealers in such marine stores as aforesaid, within the limits of the cinque ports, two ancient towns, and their members, shall keep a book or books fairly written, in which entries shall be from time to time regularly made of all such marine stores as shall be by them from time to time bought, containing a true account and description of the times when the same were so respectively bought by them, and of the names and places of abode of the respective sellers thereof; and also that before the party who shall have obtained such permit for the cutting up of any such cable or cordage, (as hereinbefore required to be obtained,) shall proceed to cut up the same by virtue thereof, there shall be published, by the space of one week at least before the time of cutting up of the same, one or more advertisements in some public newspaper, printed within the counties of Kent, Sussex, and Essex, and near to the usual residence or place of abode of such party, notifying that such party had obtained such permit for the purpose of cutting up such quantity of cable or cordage, and of such kind and quality as therein described, a true copy of which permit shall be inserted in such advertisement, whereupon it shall be lawful for all and every person or persons who may have just cause to suspect, and shall have verified upon oath the fact of such his, her, or their suspicion before any of the persons duly authorised to act as magistrates, within the limits aforesaid, by warrant of such magistrate to him or them for that purpose thereupon granted, to require of and from any such dealer who shall have so advertised, and shall be so sworn to be suspected as aforesaid, the production and examination of the book or books of entries hereby required by him to be kept, and to inspect and examine the cable or cordage described in such permit; and in

Dealers to keep an account of the marine stores bought by them.

Penalty for neglect, &c.

case any such dealer shall, when so thereunto required as aforesaid, neglect or refuse to produce to the person named in such warrant as the person on whose oath the same had been obtained, the book or books containing the entries of such dealer so required to be made therein as aforesaid, or shall neglect to keep any such book or books in which entries containing accounts of the several particulars hereinbefore required to be entered shall be made, or to permit such inspection and examination as aforesaid, or shall, after obtaining such permit for the cutting up of any cable or cordage, and before the cutting up of the same, neglect to publish such one or more advertisements relative thereto as is hereinbefore directed and required to be published, the dealer or dealers so offending in all or any of the particulars hereinbefore mentioned shall forfeit and pay for every such offence, being his, her, or their first offence, any sum not exceeding twenty pounds, nor less than ten pounds; and for every second and further offence any sum not exceeding fifty pounds, nor less than thirty pounds; one half of which penalties shall, on conviction before any of such magistrates duly authorised to act within the limits aforesaid be paid to the informer, and the other half to the poor of the parish in which such offence shall be committed; and in case any of the penalties by this act imposed shall not be paid, with the charges incident to the conviction, immediately upon such conviction, the same shall and may be levied, by the warrant of such magistrate as aforesaid, by distress upon the goods and chattels of every such offender or offenders; and in case there shall be no sufficient distress, then every such offender or offenders shall and may be committed by such magistrate as aforesaid to the common gaol within the limits aforesaid, in the case of any first offence, for the space of six months; and in the case of any second or further offence, for the space of twelve months, unless the said penalty and charges shall be sooner paid.

Inhabitants to be competent witnesses.

XV. And be it further enacted by the authority aforesaid, That the inhabitants of any parish, township, or place, within the jurisdiction aforesaid, shall be deemed and taken to be competent witnesses for the purpose of proving the commission of any offence against this act, within the limits of such parish, township, or place, notwithstanding the penalty incurred by such offence, or any part thereof, is or may be given or applicable to the poor of such parish, township, place, or otherwise, for the benefit or use, or in aid or exoneration of such parish, township, or place.

The lord warden and his deputies, judge, &c. to have the like power as justices of the peace or commissioners under this act.

XVI. And be it further enacted by the authority aforesaid, That the lord warden of the cinque ports for the time being, and the lieutenant of Dover Castle for the time being, and the deputy wardens of the cinque ports for the time being, and the judge official and commissary of the Court of Admiralty of the Cinque Ports, two ancient towns, and the members thereof for the time being, and any other officer who shall be specially appointed by the lord warden; and all and every of them shall and may execute, perform, and do, within the jurisdiction aforesaid, all the acts, matters, and things contained in this act, in like manner, to all intents and purposes, as any magistrate or magistrates, or any commissioner or commissioners to be appointed by virtue of this

act, is and are authorised to execute, perform, and do the same.

XVII. And whereas, by a certain act passed in the twenty-eighth year of the reign of King Henry the Eighth, intituled For Pirates, it is among other things enacted, to the effect following, that "whenever any commission for the punishment of certain offences therein named shall be directed or sent to any place within the jurisdiction of the five ports, that then every such commission shall be directed unto the lord warden of the said port for the time being, or to his deputy, or unto three or four such persons as the Lord Chancellor for the time being shall name and appoint:" And whereas by the said act it is further enacted, to the effect following, "that every inquisition and trial to be had by virtue of such commission shall be made and had by the inhabitants of the said five ports, or the members of the same:" And whereas of a long time past no such commission has been sent to any place within the jurisdiction of the cinque ports; be it enacted, for the more certain and speedy administration of justice, that as often as His Majesty shall direct a commission according to the provisions of the aforesaid act to the admiral or admirals, or his or their lieutenant, deputy, and deputies; it shall and may be lawful for his Majesty, on the application of the lord warden of the cinque ports, to direct such commission jointly to the admiral or admirals, or his or their lieutenant, deputy and deputies, and also to the lord warden of the cinque ports for the time being, and to his deputy, and the commissioners, who shall sit by virtue of such commission, so jointly addressed to whatever shire or place in the realm the same shall be limited, shall have full power and authority to inquire into, try, and determine all offences named in the said act, or in any other act relating to proceedings under such commission, by the oaths of twelve good and lawful inhabitants in the shire limited in the said commission, whether the said offences shall have been committed within the jurisdictions of the lord admiral of England, or of the lord warden of the cinque ports; and all and every trial, conviction, judgment, and proceeding whatsoever under such commission, shall be as good and effectual to all intents and purposes in law, and shall be followed by the same consequences to the offender or offenders as if the same were had by virtue of any separate commission to be issued under the provisions of the aforesaid act of King Henry the Eighth.

Manner of issuing commissions for the punishment of offences.

XVIII. Provided always, and it is hereby further declared by the authority aforesaid, That this act or any thing herein contained shall not extend, or be construed to extend, to the taking away, abridging, prejudicing, or impeaching in any manner whatever the jurisdiction of the High Court of Admiralty of England, or the jurisdiction of the Admiralty Court of the Cinque Ports, two ancient towns, and their members, but that it shall and may be lawful for the said Courts respectively, and the judge or judges thereof for the time being, to have, use, exercise, and enjoy jurisdiction over all such matters, rights, and offences, as they have heretofore had, used, exercised, and enjoyed, as fully and effectually, to all intents and purposes whatever, as if this act had not

Reservation of the rights of the Admitalty Court, and of the Admiralty of the Cinque Ports.

been made, any thing hereinbefore contained to the contrary in any wise notwithstanding.

Reservation of the rights of the Trinity House.

XIX. Provided also, and it is hereby further enacted and declared, That this act, or any thing herein contained, shall not extend, or be construed to extend, to the taking away, abridging, hindering, prejudicing, or impeaching of any grant, liberties, franchises, and privileges heretofore granted to and vested in the Corporation of the Trinity House of Deptford Strond, but that the said Corporation shall hold and enjoy the same as fully and effectually, to all intents and purposes, as they might have done in case this act had never been made; any thing hereinbefore contained to the contrary thereof in any wise notwithstanding.

Boundaries of the jurisdiction of the lord warden of the cinque ports.

XX. And whereas doubts have arisen as to the exact boundaries of the jurisdiction of the lord high admiral and the lord warden of the cinque ports, and it is highly expedient for the purposes of this act, that the same should be clearly set forth; now it is hereby declared and enacted, That the boundaries of the jurisdiction of the lord warden of the cinque ports, in regard to any matter or thing contained in this act shall be, and shall be deemed and taken to be as follows: that is to say, from a point to the westward of Seaford in the county of Sussex, called Red Cliff, including the same thence passing in a line one mile without the sand or shoal called The Horse of Willingdon, and continuing the same distance without the ridge and new shoals, and thence in a line within five miles of Cape Grizries on the coast of France, thence round the shoal called The Overfalls, two miles distant from the same, thence in a line without, and the same distance along the eastern side of the Galloper Sand, until the north end thereof bears west-north-west true bearing from the west-north-west bearing of the Galloper it runs in a direct line across the shoal called The Thwart Middle, till it reaches the shore underneath the Maze Tower, from thence following the line of the shore up to Saint Osyth in the county of Essex, and following the course of the shore up the river Coln to the landing place nearest Brightlingsea, from thence in a direct line to Shoe Bacon, from thence to the point of Shelness on the Isle of Shippey, and from thence across the waters to Feversham, and from thence following the line of coast round the North and South Forelands and Beachy Head, till it reaches the said Red Cliff, including all the waters, creeks, and havens comprehended between them: Provided always, and it is hereby declared, that nothing in this act contained shall extend, or be construed to extend, to enlarge or abridge the local limits of the ancient jurisdiction, rights, and privileges of the lord high admiral of England, or the lord warden or admiral of the cinque ports respectively, or their respective representatives, but that the same shall remain according to ancient usage, and that the description hereinbefore contained shall only be deemed applicable to the purposes of this act, any thing hereinbefore contained to the contrary notwithstanding.

For the better adjustment of salvage under the 12th Anne.

XXI. And whereas it is expedient that the like means of conclusively adjusting and recovering the *quantum* of the monies or gratuities to be paid to the several persons acting or being employed in the salvage of any ship, vessel, or goods, should subsist

and be by law applicable in cases where the salvors shall have acted under and by the mere employment and authority of the commander or other superior officer, mariners, or owners of any ship or vessel in distress, as are now by law provided for adjusting the *quantum* of such monies or gratuities which shall have become due in cases where application shall have been first made to officers of the customs, or other the officer or officers in that behalf named and appointed in and by a certain statute, made in the twelfth year of the reign of our late sovereign lady Queen Anne, intituled An Act for preserving of all such ships and goods thereof which shall happen to be forced on shore, or stranded upon the coasts of this kingdom, or any other of Her Majesty's dominions, and where assistance shall have been thereupon rendered in pursuance of the provisions of that statute; be it therefore enacted and declared by the authority aforesaid, That from and after the passing of this act, all and every the means which in virtue of the statute last mentioned subsist, and may now be by law applied for the conclusively adjusting and for the recovering of the *quantum* of the monies or gratuities to be paid to the several persons acting or being employed in the salvage of any ship, vessel, or goods, in cases where application shall have been first made pursuant to that statute to officers of the customs, or other the officer or officers therein in that behalf mentioned, and assistance shall have been thereupon rendered and had in pursuance of the provisions of that statute, shall be by law applicable and available in like manner, to all intents and purposes, in cases where the salvors shall have acted under and by the mere employment and authority of the commander or other superior officers, mariners, or owners of any ship or vessel in distress, although no such application shall have been made to, nor any authority or assistance derived from any officers of the customs, or other the officer or officers in the said statute in that behalf mentioned; and that upon payment or tender and refusal of the *quantum* of monies or gratuities to be paid to the several persons who shall have acted or been employed in such salvage, or in case such payment or tender cannot be made, or security being given for the due payment thereof to the satisfaction of the justices who shall have adjusted such *quantum* of gratuities, it shall not be lawful for any officer of the customs, or other person or persons having the possession or custody of such ship, vessel, or goods, any longer to retain the possession or custody of the same, or any part thereof, by reason or pretence of any claim or right to a compensation or gratuity for such salvage as aforesaid, or for having acted or been employed therein.

How *quantum* of money or gratuity to salvors shall be ascertained.

XXII. Provided always, That in cases where the salvors shall have acted without application made to and without any authority or assistance derived from any officer of the customs or other officer in the said act mentioned, and the commander or other superior officer, mariners, or owners of such ship or vessel so saved as aforesaid, or the merchant or other person whose goods shall be so saved, or their agents as aforesaid, shall disagree with such salvors, touching the *quantum* of the monies or gratuity deserved by any persons so employed as aforesaid, it shall be lawful for the commander of such ship or vessel so saved, or the owner of the goods, or mer-

chant interested therein, or their agents, and for such salvors as aforesaid, to nominate three of the neighbouring justices of the peace to adjust the *quantum* of the monies or gratuities to be paid to such salvors; and in case the parties shall not agree in such nomination, that then on the application of any of the parties to any one neighbouring justice of the peace, the justice so applied to shall nominate two other neighbouring justices of the peace; and such three neighbouring justices shall and may thereupon, and they are hereby authorised and required, to adjust the *quantum* of the monies and gratuities to be paid to all and each of such salvors who shall disagree with such master, commanding officer, merchant, or owners, or their agents as aforesaid, touching the *quantum* of monies, or the gratuity to be paid to him or them respectively, for his or their having been employed and acted in such salvage as aforesaid.

Jurisdiction of cinque ports not to be affected.

XXIII. Provided always, That nothing herein in this behalf contained shall extend, or be construed to extend, to affect, impeach, or alter any of the several provisions herein contained in respect to the cinque ports, or the jurisdiction to be exercised within the same, or to affect or abridge in any degree the power or authority hereinbefore given to the said commissioners so to be appointed as aforesaid.

To be deemed a public act;

XXIV. And be it further enacted by the authority aforesaid, That this act shall be taken and allowed in all Courts within this kingdom as a public act; and all judges and justices are hereby required to take notice thereof as such without the same being specially pleaded.

and to continue for seven years.

XXV. Provided always, That this act shall continue in force for seven years, and from thence to the end of the then next session of parliament, and no longer.

SCHEDULE to which this Act refers.

ON the day of in the year of our Lord before, &c.
at in the county of
[*Ships' Names.*] [*Masters' Names.*]

A. B. [*here insert the name of the salvors*] against the said ship whereof was master, her tackle, apparel and furniture, and the goods, wares, and merchandizes, on board the same, and also against the said master and the owners of the said ship and cargo, [or, *as the case may be*, against certain goods and merchandizes lately laden on board the said ship, whereof was master; and also against the said master and the owners (or if the owners alone appear by themselves or agents, then leave out the master's name) of the said goods and merchandizes] in a cause of salvage.

On which day appeared personally *W. X.* of and *Y. Z.* of who produced themselves as sureties for the said the master, and for the owners of the said ship and cargo, [or, *as the case may be*,] for the said master and owners of the said goods and merchandizes (or for the owners of the said goods and merchandizes) and submitting themselves to the jurisdiction of the High Court of Admiralty of England [*or* the Court of Admiralty for the Cinque Ports, *as the case may be*] bound themselves, their heirs, executors and administrators, for the said master and owners of the said ship and cargo, [or, *as the case may be*] for the said master and owners, or for the owners of the said goods and merchandizes, in the sum of pounds of lawful money of Great Britain, unto the said *A. B.*, &c. to answer the salvage and expences on the said ship and cargo [or, *as the case may be*] on the said goods and merchandizes, as shall hereafter be decreed by the said Court, according to the tenor of the act in that behalf made and provided; and unless they shall so do, they hereby consent that execution shall issue forth against them, their heirs, executors and administrators, goods and chattels, wheresoever the same shall be found, to the value of the sum abovementioned.

This bail was duly taken, acknowledged and received, at the time and place abovewritten, before me the undersigned commissioner; and I do hereby further certify, that I do believe and consider the persons abovementioned sufficient security for the said sum of £.

W. X.
Y. Z.

26 GEO. II. c. 19.

An Act for enforcing the Laws against Persons who shall steal or detain shipwrecked Goods; and for the Relief of Persons suffering Losses thereby.

Preamble.

WHEREAS notwithstanding the good and salutary laws now in being against plundering and destroying vessels in distress, and against taking away shipwrecked, lost, or stranded goods, many wicked enormities have been committed, to the disgrace of the nation, and to the grievous damage of merchants and mariners of our own and other countries; for remedy thereof, be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, That if any person or persons shall plunder, steal, take away, or destroy any goods or merchandize, or other effects, from or belonging to any ship or vessel of His Majesty's subjects, or others, which shall be in distress, or which shall be wrecked, lost, stranded, or cast on shore, in any part of His Majesty's dominions (whether any living creature be on board such vessel or not) or any of the furniture, tackle, apparel, provision, or part of such ship or vessel; or shall beat or wound, with intent to kill or destroy, or shall otherwise wilfully obstruct the escape of any person endeavouring to save his or her life from such ship or vessel, or the wreck thereof; or if any person or persons shall put out any false light or lights, with intention to bring any ship or vessel into danger, then such person or persons so offending shall be deemed guilty of felony, and being lawfully convicted thereof, shall suffer death as in cases of felony, without benefit of clergy.

Persons convicted of plundering shipwrecked goods, &c. or of obstructing the escape of any person from a wreck, or of putting out false lights to deceive vessels, to suffer death without benefit of clergy.

Provided always, and be it enacted by the authority aforesaid, That when goods or effects of small value shall be stranded, lost, or cast on shore, and shall be stolen without circumstances of cruelty, outrage, or violence; then, and in such cases, it shall be lawful for any person or persons to prosecute for such offence by way of indictment for petit larceny; and the offenders being thereof lawfully convicted, shall suffer such punishment as the laws, in cases of petit larceny, do enjoin or require.

Where goods of small value, shall be stolen without any circumstances of cruelty, the offender may be indicted for petit larceny.

And be it further enacted by the authority aforesaid, That it shall be lawful for any one or more of His Majesty's justices of the peace, upon information made before him or them, upon oath (which oath all justices are hereby empowered to administer) of any part of the cargo or effects whatsoever belonging to any ship or vessel lost or stranded upon or near the coasts aforesaid, being unlawfully carried or conveyed away, or concealed in any house, out-house, barn, or other place, or of some reasonable cause of suspicion thereof, to issue his or their warrant or warrants for the searching of such house, out-house, barn, or other place, as in

Justices upon information given them of any shipwrecked goods being stolen, or concealed, to issue search warrants;

other cases of stolen goods: And if the same shall be found in such house, out-house, barn, or other place or places, or upon or in the custody or possession of any person or persons not legally authorised or entitled to keep and withhold the same; and the owner or occupier of such house, out-house, barn, or other place, or the person or persons upon whom, or in whose custody or possession the same shall be found, shall not immediately, upon demand, deliver the same to the lawful owner or owners thereof, or to such other person or persons as shall be lawfully authorised to demand the same; or shall not give a good account, to the satisfaction of the said justice or justices, how he, she, or they came by, or became possessed thereof, it shall and may be lawful to and for such justice or justices, upon proof of such refusal, and he and they is and are hereby required to commit the said offender or offenders to the common gaol for the space of six months, or until he, she, or they shall have paid to such lawful owner or owners, or to the person or persons lawfully authorised to receive the same, treble the value of the goods or things so by him, her, or them unlawfully detained.

and the persons in whose custody the goods shall be found, not delivering up the same, or giving a satisfactory account how they came possessed thereof, to be committed for six months, or until payment of treble value of the goods.

And be it further enacted by the authority aforesaid, That if any person or persons shall offer or expose to sale any goods or effects whatsoever, belonging to any ship or vessel, lost, stranded, or cast on shore, as aforesaid, and unlawfully taken away, or reasonably suspected so to have been; then, and in every such case, it shall be lawful for the person or persons to whom the same shall be so offered for sale, or any officer of the customs or excise, or any constable, headborough, or tythingman, or other peace officer, to stop, take, and seize the said goods and effects; and that he or they shall, with all convenient speed, carry the same, or give notice of such seizure, to some one or more of His Majesty's justice or justices of the peace; and if the person or persons who shall have offered the said goods or effects to sale, or some other person or persons on his, her, or their behalf, shall not appear before the said justice, within ten days next after such seizure, and make out, to the satisfaction of the said justice, the property of the said goods or effects to be in him, her, or them, or in the person or persons by whom he, she, or they, was or were employed to sell the same; then the said goods or effects shall, by order of the said justice, be forthwith delivered over to or for the use of the rightful owner or owners thereof, upon payment of a reasonable reward for such seizure (to be ascertained by the said justice) to the person who seized the same; and such justice shall and may commit the person or persons who shall so have offered or exposed the said goods or things to sale as aforesaid, to the common gaol for the space of six months, or until he, she, or they, shall have paid to such lawful owner or owners, or to the person or persons lawfully authorised to receive the same, treble the value of the said goods or effects, so by him, her, or them, unlawfully offered to sale, as aforesaid.

Goods offered to sale, suspected to be shipwrecked, and stolen, to be stopt,

and notice thereof to be given to a justice;

and the person offering the same to sale not making out his property therein,

the goods to be returned to the owner,

and the offender to be committed for six months, or till payment of treble value of the goods.

And be it further enacted by the authority aforesaid, That in case any person or persons not employed by the master, mariners, or owners, or other persons lawfully authorised, in the salvage of any ship or vessel, or the cargo or provision thereof, shall, in the

Persons who shall save, and carry any vessel or goods into port, &c. for

the benefit of the owners, and give notice thereof;

absence of persons so employed or authorised, save any such ship, vessel, goods, or effects, and cause the same to be carried, for the benefit of the owners or proprietors, into port, or to any near adjoining custom-house or other place of safe custody, immediately giving notice thereof to some justice of the peace, magistrate, or custom-house or excise officer, or shall discover to any such magistrate or officer where any such goods or effects are wrongfully bought, sold, or concealed, then such person or persons shall be entitled to a reasonable reward for such services, to be paid by the masters or owners of such vessels or goods, and to be adjusted in case of disagreement about the *quantum*, in like manner as the salvage is to be adjusted and paid by virtue of the statute made in the twelfth year of the reign of her late Majesty Queen Anne, intituled An Act for the preserving all such ships, and goods thereof, which have happened to be forced on shore, or stranded upon the coasts of this kingdom, or any other of Her Majesty's dominions, or else in the manner hereinafter prescribed, as the case shall require.

or who shall discover where any such goods are wrongfully bought, sold, or concealed, are entitled to the reward; and the *quantum* in case of disagreement is to be adjusted according to act of 12 *Annæ*.

Where any vessel or effects shall be stranded, public notice to be given for a meeting of the sheriff, justices, and other magistrates, &c.

And be it further enacted by the authority aforesaid, That for the better ascertaining the salvage to be paid in pursuance of this present act, and the act beforementioned, and for the more effectual putting the same acts in execution, the justice of the peace, mayor, bailiff, collector of the customs, or chief constable, who shall be nearest to the place where any ship, goods, or effects shall be stranded or cast away, shall forthwith give public notice for a meeting to be held as soon as possible of the sheriff or his deputy, the justices of the peace, mayors, or other chief magistrates of towns corporate, coroners, and commissioners of the land-tax, or any five or more of them, who are hereby required and empowered to give aid in the execution of this and the said former act, and to employ proper persons for the saving of ships in distress, and such ships, vessels, and effects, as shall be stranded or cast away; and also to examine persons upon oath touching or concerning the same, or the salvage thereof, and to adjust the *quantum* of such salvage, and distribute the same among the persons concerned in such salvage, in case of disagreement among the parties, or the said persons; and that every such sheriff, justice of the peace, mayor, chief magistrate, coroner, lord of a manor, under sheriff, or commissioner of the land-tax, attending and acting at such meeting, shall be paid four shillings a day for his expences in such attendance out of the goods and effects saved by their care or direction.

who are to aid in saving the vessel and goods, &c.

and to adjust, and distribute the *quantum* of the salvage;

and 4*s*. a day is allowed for their attendance.

If the charges of salvage shall not be paid, the officer of the customs may raise the same by a bill of sale of the vessel or cargo; which may be redeemed, upon payment of the principal and interest.

Provided always, and be it further enacted by the authority aforesaid, That if the charges and rewards for salvage, directed to be paid by the said act of the twelfth year of the reign of her said late majesty Queen Anne, and by this present act, shall not be fully paid, or sufficient security given for the same within forty days next after the said services performed, then and in such case it shall be lawful for the officer of the customs concerned in such salvage, to borrow or raise so much money as shall be sufficient to satisfy and pay such charges and rewards, or any part thereof then remaining unpaid, or not secured as aforesaid, by or upon one or more bill or bills of sale, under his hand and seal, of the ship or vessel, or cargo saved, or such part thereof as shall be sufficient,

redeemable nevertheless upon payment of the principal sum so borrowed, and interest for the same after the rate of four pounds *per cent. per* annum.

And be it further enacted by the authority aforesaid, That if oath shall be made before any magistrate, lawfully empowered to take the same, of any such plunder or theft, and the examination in writing thereupon taken shall be delivered to the clerk of the peace of the county, riding, or division wherein such fact shall be committed, or to his deputy; or if oath shall be made before any such magistrate of the breaking any ship, contrary to the aforesaid act made in the twelfth year of the reign of her said late Majesty Queen Anne, and the examination in writing thereupon taken shall be delivered to such clerk of the peace, or his deputy; then such clerk of the peace shall cause the offender or offenders in any of the said cases to be forthwith prosecuted for the same, either in the county where the fact shall be committed, or in any county next adjoining; in which adjoining county any indictment may be laid by any other prosecutor; and if the fact be committed in Wales, then the prosecution shall or may be carried on in the next adjoining English county; and the necessary charges of such prosecutions by the clerk of the peace, shall be paid by the treasurer of the county, riding, or division, where the fact shall be committed, to such amount as the justices of the peace in their general or quarter sessions shall order and ascertain the same; and if such clerk of the peace shall neglect or refuse to carry on such prosecution in due manner, he shall forfeit one hundred pounds for every such offence, to any person or persons who shall sue for the same by action of debt, bill, plaint, or information, in any of His Majesty's Courts of Record at Westminster; in which action no essoin, protection, wager of law, or more than one imparlance, shall be allowed.

Where oath shall be made of any such plunder or theft.

or of breaking a ship, contrary to act 12 Annæ, and the examination shall be delivered to the clerk of the peace,

he is to prosecute the offender;

and the charges to be paid by the treasurer of the county.

Clerk of the peace neglecting to prosecute, forfeits 100*l*.

And be it further enacted by the authority aforesaid, That the commissioners of the land-tax, the deputy sheriff, the coroner, and the officers of excise in each county, riding, and division, shall be proper officers for putting in execution this present act, and the said act made in the twelfth year of the reign of her late Majesty Queen Anne, together with those therein respectively named for that purpose.

Proper officers for putting this, and the act of 12 Annæ, in execution.

And whereas by an act made in the third year of the reign of his late Majesty King George the First, intituled An Act for the better regulating of Pilots for the conducting of Ships and Vessels from Dover, Deal, and the Isle of Thanet, up the Rivers of Thames and Medway, it is enacted, That the lord warden of the cinque ports for the time being shall nominate and appoint, by an instrument under his hand and seal, three or more substantial persons in each of the cinque ports, two ancient towns and their members, to adjust and determine, within the space of twelve hours, differences which shall or may arise within the jurisdiction of the cinque ports relating to the salvage of anchors and cables from which vessels shall or may be forced by extremity of weather: Now it is hereby enacted, That the lord warden of the cinque ports for the time being, and the lieutenant of Dover castle for the time being, and the deputy warden of the cinque ports for the time being, and the judge official, and commissary of the Court of Admiralty of the

Act 3 Geo. I.

Proper officers for putting this and the act of 12 Annæ, in

execution within the liberty and jurisdiction of the cinque ports, &c.

cinque ports, two ancient towns, and the members thereof for the time being, and all and every of them, and all and every other person and persons appointed or to be appointed by the lord warden of the cinque ports for the time being, pursuant to the said act made in the third year of his late Majesty's reign, shall be the persons to put in execution, within the liberty and jurisdiction of the cinque ports, two ancient towns and their members, all the powers and authorities given and granted in and by this act, and in and by the beforementioned act of parliament, made in the twelfth year of her said late Majesty Queen Anne; and also in and by the said act made in the fourth year of the reign of his late Majesty King George the First; and also shall and may execute, perform, and do, within the jurisdictions aforesaid, all the acts, matters, and things contained in this and the beforementioned statutes, in like and as full and ample manner, to all intents and purposes, as any justice or justices of peace, or any other person or persons, are by this and the said acts appointed or authorised to do in any other part of the kingdom.

Persons convicted of assaulting any magistrate or officer, &c. in the exercise of his duty, in the salvage of any vessel or goods to be transported for 7 years.

And be it further enacted by the authority aforesaid, That if any sheriff, or his deputy, justice of the peace, mayor, or other magistrate, coroner, lord of a manor, commissioner of the land tax, chief constable, or petty constable, or other peace officer, or any custom-house or excise officer, or other person lawfully authorised, shall be assaulted, beaten, and wounded, for or on account of the exercise of his or their duty, in or concerning the salvage or preservation of any ship or vessel in distress, or of any ship or vessel, goods or effects, stranded, wrecked, or cast on shore, or lying under water, in any of His Majesty's dominions; then any person or persons so assaulting, beating, and wounding, shall upon trial and conviction, by indictment at the assizes, or general gaol delivery, or at the general or quarter sessions for the county, riding, or division, where such offence shall be committed, be transported for seven years to some of His Majesty's colonies in America, and shall be subject to such subsequent punishment, in case of return before that time, as other persons under sentence of transportation are by the law subjected unto.

Justice, in the absence of the sheriff, may take a sufficient force to repress any unjust violence, &c.

And be it further enacted by the authority aforesaid, That it shall be lawful for any one or more of His Majesty's justices of the peace, in case of need, and in the absence of the high sheriff, to take sufficient power of the county, to repress all unjust violence, and duly to enforce the execution of this act.

Persons who are empowered to give orders where any shall be assembled in case of a shipwreck, &c.

And to prevent confusion among persons assembled to save any ship, vessel, goods, or effects, as aforesaid, either for want of proper orders, or by contradictory orders; be it further enacted, That all persons so assembled shall conform in the first place to the orders of the master or other officers or owners, or other persons employed by them; and for want of their presence or directions, then in the next place to the orders of the persons authorised by this act, or the aforesaid act of Queen Anne, in the like manner, in the following subordination, as any of the said persons shall happen to be present; that is to say, in the first place, to the orders of any officer or officers of the customs; then of any officer or officers of the excise; then of the sheriff or his

deputy; then of any justice or justices of the peace; then of the mayor or chief magistrate of any Corporation; then of the coroner; then of any commissioners of the land tax; then of any chief constable; then of any petty constable or other peace officers: And any person whatsoever acting knowingly and wilfully contrary to such orders, shall forfeit any sum not exceeding five pounds, to be levied by warrant of one justice of the peace; and, in case of nonpayment, the offender shall be committed to the House of Correction for any time not exceeding three months.

Persons acting contrary to orders forfeit 5*l.*

Provided always, and it is hereby enacted, That neither this act, nor any thing herein contained, shall any way extend to deprive or prejudice His Royal Majesty, his heirs or successors, or any claiming under them, or any patentee or grantee of the Crown, or any lord or lords of any manor or manors, or other person whomsoever, of or in relation to any right which they or any of them have or may have or lawfully claim to any wreck or wrecks, or any goods which are or shall be flotsam, jetsam, or lagan, but that such respective rights shall be enjoyed in as full, ample, and beneficial a manner, in every respect, as if this act had never been made.

Rights of the Crown, and of lords of manors, &c. to any wreck, or goods which shall be flot-sam, jetsam, or lagan, reserved to them.

And be it further enacted by the authority aforesaid, That the officer of the customs who shall act in the preserving of any ship or vessel in distress, or the cargo thereof, shall, as soon as conveniently may be, cause or procure all persons belonging to the said ship or vessel, and others who can give any account thereof, or of the cargo thereof, to be examined upon oath before some justice of the peace, as to the name or description of the said ship or vessel, and the names of the master, commander, or chief officer and owners thereof, and of the owners of the said cargo, and of the ports or places from or to which the said ship or vessel was bound, and the occasion of the said ship's distress; which examination the said justices are hereby required to take down in writing; and they shall deliver a true copy thereof, together with a copy of the said account of the goods, to the said officer of the customs, who shall forthwith transmit the same to the secretary of the Admiralty for the time being, who shall publish, or cause to be published in the next London Gazette, so much thereof as shall or may be necessary for the information of the persons interested or concerned therein.

Examination on oath to be taken of the ship's name, her cargo, and owners, &c.

and a copy thereof to be transmitted to the secretary of the Admiralty, and to be published in the London Gazette.

And be it further enacted by the authority aforesaid, That the beforementioned act of parliament made in the twelfth year of her said late Majesty Queen Anne, and also an act made in the fourth year of the reign of his late Majesty King George the First, for enforcing and making perpetual the beforementioned act, and for inflicting the punishment of death on such as shall wilfully burn or destroy ships, shall in all things remain in full force, save only so far as the same are altered or changed by this present act.

The acts of 12 Anne, and 4 Geo. I. to be in force where not altered by this act.

And be it further enacted by the authority aforesaid, That this act shall take place from the 29th day of September, in the year of our Lord 1753.

Commencement of this act.

Provided, That nothing in this act contained shall extend, or be construed to extend, to that part of Great Britain called Scotland.

This act not to extend to Scotland.

49 Geo. III. c. 122.

An Act for preventing Frauds and Depredations committed on Merchants, Ship-Owners, and Underwriters, by Boatmen and others; and also for remedying certain defects relative to the adjustment of Salvage in England, under an Act made in the twelfth year of Queen Anne.—[20th *June*, 1809.]

WHEREAS great depredations have for many years past been committed by boatmen, pilots, hovellers, and others, on ships in distress and otherwise; and anchors, cables, and other property of ships and vessels on the coasts and in the harbours, bays, and rivers of England and Wales, and the town and harbour of Berwick-upon-Tweed, are oftentimes carried away or destroyed by such boatmen, pilots, hovellers, and others, or when found are not restored to the owners thereof; and great extortions are committed and exorbitant demands made upon the masters and owners of such ships for saving and preserving the same, to the great loss and injury of the ship-owners, merchants, underwriters, ond others concerned in shipping: May it therefore please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, That from and after the 1st day of August, 1809, all pilots, boatmen, hovellers, or other persons who shall take up any anchors, cables, or any goods or merchandize which may have been parted with, cut from, or left by, any ship or vessel within any harbours, rivers, or bays, or on any of the coasts of this kingdom, whether the same ship or vessel shall be or shall have been in distress or otherwise, and which shall have been weighed, swept for, or taken possession of by any such boatman, pilot, hoveller, or other person, shall send a report in writing of the articles so found, and stating the marks, (if any,) thereon, and also an accurate and particular description of the bearings, distances, and situations, and time when and where the same were so found. to a deputy vice-admiral or his agent at or near to the port or place where such boatman, pilot, hoveller, or other person shall first arrive with such articles, within forty-eight hours after his or their arrival at such port or place, or before he or they shall leave the port, if he or they shall quit it before that time shall expire; and shall also within such period as aforesaid deliver such articles so found into a proper warehouse, or such other place as the vice-admiral of each county shall appoint for safe custody, until the same shall be claimed by the owner or owners thereof, or his, her, or their agent or agents, and the salvage, together with such other charges and expences as are hereinafter directed to be paid in respect of such articles paid by him or them, or security given for the payment thereof, to the satisfaction of the salvor or salvors thereof; and every such pilot,

Pilots and others to deposit anchors, cables, and other ships' materials taken possession of by them in the places to be appointed by this act.

boatman, hoveller, or other person who shall wilfully and fraudulently keep possession of or retain, or conceal or secrete any anchors or cables so found, weighed, swept for, or taken possession of as aforesaid, and shall not report and deliver the same at some proper warehouse or other place in the manner aforesaid, and within the time hereinbefore limited, shall on conviction be adjudged and deemed guilty of receiving goods knowing them to have been stolen, and shall suffer the like punishment as if the same had been stolen on shore.

Deputy vice-admiral to send report of goods deposited to the Corporation of the Trinity House of Deptford Strond.

II. And be it further enacted, That every deputy vice-admiral, or his agent, to whom any such report shall be sent, shall within two days forward the same, or a true copy thereof, to the secretary of the Corporation of the Trinity House of Deptford Strond in London; and the same shall be placed by him in some conspicuous situation, for the inspection of all persons choosing to inspect and examine the same.

Proviso that no report shall be made until the articles amount in value to 20*l.*

III. Provided always, That no report shall be forwarded by such deputy vice-admiral or his agent to the said Corporation of the Trinity House of Deptford Strond, until the articles so to be deposited as aforesaid, for and in respect of which a report is required to be made as hereinbefore is directed, shall amount in value to the sum of twenty pounds.

Deputy vice-admiral may seize goods not reported and deposited as required by this act; and, if seized without previous information, shall have one-third of the value thereof.

IV. And be it further enacted, That it shall be lawful for any deputy vice-admiral, or his agent, to seize and detain any such articles as shall not have been reported in the manner hereinbefore directed; and, upon such seizure such deputy vice-admiral, or his agent, shall deposit the same in the warehouse or other place to be appointed as aforesaid, and shall within two days thereafter send a report in writing of the articles so seized, and stating the marks, (if any,) thereon, to the said Corporation of the Trinity House of Deptford Strond as before directed, to be made public as aforesaid; and every such deputy vice-admiral, or his agent, so seizing, who shall not make such report as aforesaid, within two days after seizures as aforesaid, shall, on conviction before any justice of the peace or magistrate, upon the oath of one credible witness, or on the confession of the party offending, forfeit and pay the sum of twenty pounds for every such neglect, together with double the value of the goods so seized; one half of which penalty shall be paid to the informer, and the other half to the poor of the parish or township where such offence shall be committed; and every deputy vice-admiral, or his agent, who shall make any such seizure, without any previous information being given to such deputy vice-admiral or his agent, shall, on the same articles being claimed by and delivered to the owner thereof, or his or her agent, be entitled to receive such sum of money as shall be equal to one third part of the value thereof.

Mode of ascertaining the value of articles seized.

V. Provided always, and be it further enacted, That if the owner and deputy vice-admiral or agent so seizing cannot agree on the value of the articles, such value shall be ascertained in like manner as in hereinafter directed with regard to salvage.

If deputy vice-admirals seize by previous in-

VI. Provided also, and be it further enacted, That if any such seizure shall have been made in consequence of any information given to any such deputy vice-admiral or his agent, the deputy

formation, he and informer to divide part.

vice-admiral or his agent so seizing, shall only be entitled to receive from the owner or their agents of the articles one-sixth part of the value thereof, and one other sixth part of such value shall be paid to the person who shall have given the information, the value of such articles to be ascertained in manner aforesaid.

If articles not claimed within a limited time, to be sold according to the stat. of 12 Anne, c. 18. and if they shall have been seized, the deputy vice-admiral seizing, and the person informing, shall be equally entitled to salvage.

VII. And be it further enacted, That if any such articles so reported and delivered into the warehouse or other place as aforesaid shall not be claimed within a year and a day after such report shall have been transmitted to the said Corporation of the Trinity House of Deptford Strond, as before-mentioned, the same shall be sold, and a certificate of such sale shall be delivered to the purchaser thereof, under the directions of the High Court of Admiralty, and the monies arising from the sale thereof be applied in the manner directed in and by an act passed in the twelfth year of the reign of her late Majesty Queen Anne, intituled An Act for preserving all such Ships and Goods thereof, which shall happen to be found on shore, or stranded on the Coasts of this Kingdom, or any other of Her Majesty's dominions; and if the same shall have been seized by the deputy vice-admiral or his agent as aforesaid, then the deputy vice-admiral or agent so seizing, and the person who shall have given such information as shall have led to the seizure (if any such information shall have been given) shall be equally entitled to the salvage which shall be allowed by the High Court of Admiralty to the salvors in the case of unclaimed property.

If the owners and salvors cannot agree respecting the amount of salvage, or the value of the articles, two justices shall determine the difference.

VIII. And be it further enacted, That if the salvors of any such articles or any goods so found, weighed, swept for, or taken possession of as aforesaid, and so lodged and reported as aforesaid, and the owner or owners thereof, or his, her, or their agent or agents, cannot agree respecting the amount of salvage to be paid for or in respect of the same, or the value thereof, as the case may be, then the matter in difference shall be determined by any two justices of the peace residing near to the place where such articles or goods shall be deposited; and such justices shall begin to proceed in their enquiry as to such matters in dispute, within forty-eight hours after such difference shall be referred to them for their determination thereof; and if they cannot agree respecting the same, then it shall be lawful for them to nominate any third person conversant in maritime affairs, at their option, who shall ascertain the amount of the salvage to be paid, or the value thereof, as the case may be, within forty-eight hours after he shall have been so nominated as aforesaid; and the said justices and such third person so nominated as aforesaid shall have full power and authority, whenever they see occasion, to examine the parties or their witnesses upon oath, which oath they are hereby authorized to administer.

If the justices cannot agree, they shall nominate a third person conversant in maritime affairs, who shall determine.

Two justices may in like manner determine upon remuneration to be made for services rendered to ships in distress or otherwise.

IX. And be it further enacted, That it shall also be lawful for the said justices to decide in the like manner, and within the same time as is herein-before directed, with regard to salvage on all claims and demands whatsoever which shall or may after the 1st day of August 1809, be made by pilots, boatmen, and other persons, for services of any description (except pilotage) to be rendered by them to any ship or vessel, as well for carrying off from the shore to such ship or vessel any anchors, cables, or other stores, from any

port or ports of the coast of England and Wales, and Berwick-upon-Tweed, or for the saving and preserving any goods or merchandise which may have been wrecked, stranded, or cast away from any ship or vessel, or for being instrumental in saving the life or lives of any person or persons on board the said ship or vessel, the master, owner, or owners of such ship or vessel, or his, her, or their agent or agents being present with such justices; and that the said justices, or such other person so appointed as aforesaid, shall have full power and authority to hear and determine on all cases whatever of services rendered by pilots, boatmen, and others to ships or vessels (except pilotage) whether such ships or vessels shall at the time be in distress or not, and that they shall have the like power of examining the parties or their witnesses upon oath as last herein-before directed; and the decision of such justices, or of the person so to be by them appointed as aforesaid, shall be final and conclusive on all parties, save and except in such cases in which an appeal shall be interposed by either party to the High Court of Admiralty, such appeal to be interposed within thirty days after the award of the justices or such person so appointed as aforesaid.

The decision of such justices shall in this case be final, unless an appeal to the High Court of Admiralty.

X. And be it further enacted, That in case the person or persons so claiming to be entitled to salvage, or the party or parties who is or are to pay the same, or their agents, shall be dissatisfied with such award and decision of the justices, or of the person so to be nominated by them as aforesaid, it shall be lawful for either of them respectively, within forty-eight hours after such award is made, but not afterwards, to declare to the justices, or such other person to be nominated by them as aforesaid, his, her, or their desire of obtaining the judgment of the High Court of Admiralty respecting the said salvage; and thereupon the person or persons so claiming to be entitled to salvage shall be compelled to proceed within thirty days from the date of such award, by taking out a monition against the adverse party; but in such case the said justices are hereby required and empowered to deliver to the owners and proprietors, or their agents, any such anchor or cable, goods, or other articles respecting which any claim for salvage shall be made upon the owners or proprietors thereof, his, her, or their agent, giving good and sufficient bail in double the amount of the value of the articles in respect of which such salvage shall be claimed, and which bail shall be taken by a commissioner for taking examinations in prize causes, if there shall be one in the port or place where such difference shall arise: but if there shall be no such commissioner there, then the said justices to whom such difference shall have been referred, or either of them, or any other of His Majesty's justices of the peace, are and is hereby authorized to take the same; and the commissioner or justice who shall take such bail shall certify the same according to the form contained in the schedule hereunto annexed, and transmit the same without delay to the High Court of Admiralty, together with a true certificate in writing of the gross value of the whole of the articles respecting which salvage shall be claimed, and also a copy of such proceedings and awards on unstamped paper, certified under the hand of such commissioner or justice taking the bail as aforesaid; and the same

Persons dissatisfied may appeal to the High Court of Admiralty; but the goods to be restored to the owners on giving bail.

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shall be admitted by such Court of Admiralty as evidence in the cause.

Justices to be paid.

XI. And be it further enacted, That it shall and may be lawful for the persons so to be named by the said justices as aforesaid, who shall decide on the amount of salvage to be paid, or on the value of the articles, or on the remuneration to be made to persons rendering assistance to ships or vessels, or persons as aforesaid, to demand and receive of and from the owner or owners of the articles saved, or of the ships or vessels in behalf of which the services may have been rendered, or his, her, or their agents or agent, a sum of money not exceeding two pounds two shillings each; and such owner or owners, or his, her, or their agent or agents, shall, and is, and are hereby required to pay to the persons so to be by the said justices nominated as aforesaid such fee or reward immediately after he shall have made his award or decision, and on delivery of the same.

Persons cutting away or defacing buoy ropes, &c. to be deemed guilty of felony, &c.

XII. And be it further enacted, That if any person or persons shall, from and after the 1st day of August, 1809, wilfully cut away, cast adrift, remove, alter, deface, sink, or destroy, or shall do or commit any act with intent and design to cut away, cast adrift, remove, alter, deface, sink, or destroy, or in any other way injure or conceal any buoy, buoy-rope, or mark, belonging to any ship or vessel, or which may be attached to any anchor or cable belonging to any ship or vessel whatever, whether in distress or otherwise, such person or persons so offending shall, on being convicted of such offence, be deemed and adjudged to be guilty of felony, and shall be liable to be transported for any term not exceeding seven years; or, in mitigation of such punishment, to be imprisoned for any number of years at the discretion of the court in which the conviction shall be made.

Punishing purchasers and receivers of stolen goods.

XIII. And be it further enacted, That if any person or persons shall knowingly and wilfully, and with intent to defraud and injure the true owner or owners thereof, or any person interested therein as aforesaid, purchase or receive any anchors, cables, or goods, or merchandise, which may have been taken up, weighed, swept for, or taken possession of, whether the same shall have belonged to any ship or vessel in distress or otherwise, or whether the same shall have been preserved from any wreck, if the directions herein-before contained with regard to such articles shall not have been previously complied with, such person or persons shall on conviction thereof be deemed guilty of receiving stolen goods, knowing the same to be stolen, as if the same had been stolen on shore, and suffer the like punishment as for a misdemeanor at the common law, or be liable to be transported for seven years, at the discretion of the court before which he, she, or they shall be tried.

Masters of ships bound to parts beyond the seas, finding or taking on board anchors and other articles, to report the same to the Trinity House;

XIV. And be it further enacted, That in case the master, mate, or crew of any ship or vessel bound to parts beyond the seas, shall find and take on board of such ship or vessel any anchor, cable, or any goods or merchandise, or shall receive any anchor, cable, or any goods or merchandise on board of such ship or vessel, from any other person or persons who may have found the same, knowing the same to have been so found, the master, mate, or other person

having the command of such ship or vessel, shall make a true entry in the log book of such ship of the description of the articles so found or taken on board as aforesaid, stating the marks (if any) thereon, and the bearings and distances, and other minute description, and the time when and where the same were found and taken on board; and also shall at the first possible opportunity transmit a report in writing containing a true copy of such entry in the log book of the said ship or vessel to the said Corporation of the Trinity House of Deptford Strond; and, on the return of such vessel to any port in England or Wales, or Berwick-upon-Tweed, he shall deliver the same articles into the possession of a deputy vice-admiral, or his agent in or nearest to such port, with the like report as is herein-before directed; and such deputy vice-admiral, or agent, is hereby required to transmit such report to the said Corporation of the Trinity House at Deptford Strond, to be placed by the said Corporation for inspection in like manner as aforesaid; and if the same shall not be claimed by the owner or owners thereof, or his, her, or their agent, within a year and a day after such report shall be transmitted, the same shall be sold and disposed of according to law with regard to unclaimed property; and in default thereof, or if the master of such ship or vessel shall sell or dispose of such anchor, cable, goods, or merchandise to any person or persons whomsoever, or shall not upon his first return to any port within England and Wales, or Berwick-upon-Tweed, report and deliver the same according to the provisions of this act, he shall for every such offence, on being thereof lawfully convicted before any justice of the peace or magistrate on the oath of one credible witness, or on the confession of the party offending forfeit and pay any sum not exceeding two hundred pounds, nor less than fifty pounds, one half of which penalty shall be paid to the informer, and the other half to the president and governors for the relief and support of such maimed and disabled seamen, and of the widows and children of such as shall be killed, slain, or drowned in the merchants' service, under an act of parliament made in the twentieth year of the reign of his late Majesty King George the Second, intituled An Act for the Relief and Support of maimed and disabled Seamen, and the Widows and Children of such as shall be killed, slain, or drowned, in the Merchants' Service; and shall also forfeit and pay double the value of such articles to the owners or owner thereof.

[Margin: and on their arrival in England to deposit them. — Penalty for making default. — 20 Geo. 2.]

XV. And be it further enacted, That it shall and may be lawful for the deputy vice-admiral or his agent, who shall make the report required by this act to the said Corporation of the Trinity House of Deptford Strond as aforesaid, to receive of and from the owner or owners of the articles in respect of which the report shall be made, or if the same are not claimed, then out of the produce of the sale thereof, the sum of one pound one shilling for each report; and that it shall also be lawful for the secretary or other proper officer of the said corporation of the Trinity House of Deptford Strond to receive in like manner as last mentioned the sum of one pound one shilling for each report so to be received by the said corporation, and to be made public by them as aforesaid, which last mentioned sum shall be paid to the said deputy vice-admiral or his

[Margin: Fees to be paid for reports.]

agent, before the delivery of the goods, and accounted for by him to the Trinity House.

Punishing pilots and others selling or disposing of anchors or cables in foreign countries.

XVI. And whereas pilots, hovellers, boatmen, and other persons in small vessels have for many years conveyed anchors and cables which may have been weighed, swept for, or taken possession of by them as aforesaid, or which they may have purchased of other persons, knowing them to have been weighed, swept for, or taken possession of without being reported as aforesaid, to foreign countries, and there sold and disposed of to the manifest injury and loss of the owners thereof; for remedying whereof be it further enacted, That every pilot, hoveller, boatman, or the master of any such vessel, who shall convey after the said 1st day of August, 1809, any such anchor or cable to any foreign port, harbour, creek, or bay, and there sell and dispose of the same, shall be deemed and adjudged guilty of felony, and shall be transported for any term not exceeding seven years.

Dealers in marine stores to have their names painted on their storehouses and not to cut up any cable without a permit from a magistrate.

XVII. And be it further enacted, That all persons, who shall trade or deal in buying and selling anchors, cables, sails, or old junk, old iron, or marine stores of any kind or description, shall have their names with the words "Dealer in Marine Stores" painted distinctly in letters of not less than six inches in length upon the front of all their storehouses, warehouses, and other deposits for such goods; and, in default of their so doing they shall, on conviction before any justice or justices of the peace, or magistrate or magistrates of any jurisdiction where such storehouse, warehouse, and depôt shall be, upon the oath of one credible witness, or on confession of the party offending, forfeit and pay a sum not exceeding twenty pounds, nor less than ten pounds, one half of which penalty shall be paid to the informer, and the other half to the poor of the parish or township where such offence shall be committed; and that it shall not be lawful for such dealers or traders to cut up any cable, or any part of a cable, exceeding five fathoms in length, or uncant, untwine, or unlay the same into junk or paper-stuff, on any pretence whatsoever, without first obtaining a permit from some justice of the peace or magistrate residing near to the residence of such dealer, which permit shall not be granted unless an affidavit shall have been made that the cable so intended to be cut up had been *bonâ fide* purchased, and without fraud, by the party so intending to cut up the same, and without any knowledge or suspicion on his or her part that the same had been or were dishonestly come by; and in which affidavit shall also be specified the particular quality and description of such cable, and the name or names of the seller or sellers thereof, which affidavit shall be recited and set forth at length in the permit thereupon granted, on pain of forfeiting for the first offence any sum not exceeding twenty pounds nor less than ten pounds, and for every second or further offence any sum not exceeding fifty pounds nor less than twenty pounds, to be recovered before any justice of the peace, and one half thereof to go to the informer, and the other half to the poor of the parish in which such offence shall have been committed.

Penalty.

Dealers to keep an account of old stores bought by them.

XVIII. And be it further enacted, That, for the more effectual prevention of such frauds, all dealers in such marine stores as aforesaid shall keep a book or books fairly written, in which entries

shall be from time to time regularly made of all such old marine stores as shall be by them from time to time bought, containing a true account and description of the times when the same were so respectively bought by them, and of the names and places of abode of the respective sellers thereof: And before any person who shall obtain such permit for the cutting up of any such cable (as herein-before required to be obtained) shall proceed to cut up the same by virtue thereof, there shall be published by the space of one week at least before the cutting up the same, one or more advertisement or advertisements in some public newspaper, printed nearest to the storehouse, warehouse, or depôt where the articles shall be deposited, notifying that such party had obtained such permit for the purpose of cutting up such cable, and of such kind and quality as therein described, and also specifying the place where such articles shall be depossted; whereupon it shall be lawful for all and every person or persons who may have just cause to suspect that such articles are the property of such person or persons, and shall have verified upon oath the fact of such his, her, or their suspicion before any justice of the peace or magistrate residing near to the said storehouse, warehouse, or depôt, by warrant for that purpose thereupon granted, to require of and from such dealer who shall have so advertised, and shall be so sworn to be suspected as aforesaid, the production and examination of the book or books of entries hereby required by him or her to be kept, and inspect and examine the cables described in such permit; and in case any such dealer, when so thereunto required as aforesaid, shall neglect or refuse to produce to the person named in such warrant as the person on whose oath the same shall have been obtained, the book or books containing the entries of such dealer so required to be made therein as aforesaid, or shall neglect to keep any such book or books in which entries containing accounts of the several particulars herein-before required to be entered shall be made, or to permit such inspection or examination as aforesaid, or shall after obtaining such permit for the cutting up of any such cable, and before the cutting up of the same, neglect to publish such one or more advertisement or advertisements relative thereto as is herein-before directed and required, the dealer or dealers so offending in all or any of the particulars herein-before mentioned shall forfeit and pay for every such offence, being his, her, or their first offence, any sum not exceeding twenty pounds, nor less than ten pounds, and for every second or further offence any sum not exceeding fifty pounds, nor less than twenty pounds, one half of which penalty shall, on conviction before any justice of the peace or magistrate residing near as aforesaid, be paid to the informer, and the other half to the poor of the parish or township in which such offences shall be committed; and in case any of the penalties by this act imposed shall not be paid, with the charges incident to the conviction, immediately upon such conviction, the same shall and may be levied by warrant under the hand and seal of such justice of the peace or magistrate, upon the goods and chattels of any such offender or offenders; and in case no sufficient distress shall be found, then every such offender or offenders shall and may be committed by any such justice of the peace or magistrate as aforesaid, to gaol, in

To advertise before cutting up of cordage.

Persons may demand inspection of books.

Penalty.

Recovery of penalties.

case of any first offence for the space of six calendar months, and in case of any second or further offence for the space of twelve calendar months, unless the said penalty and the charges shall be sooner paid.

Manufacturers of anchors to place marks on anchors and kedge anchors.

XIX. And be it further enacted, That from and after the 1st day of August 1809, all manufacturers of anchors and kedge anchors shall place his, her, or their name or names, together with a progressive number, and also the weight of the anchor, in legible characters upon the crown, and also upon the shank under the stock of each anchor which he, she, or they shall manufacture, and shall also place his, her, or their name or names, together with a number, and also the weight of the kedge anchor upon the crown, and also upon the shank near to the stock of every kedge anchor which he, she, or they shall manufacture; and in case any such manufacturer shall neglect to place such name, number, or weight, in the manner herein-before directed and required, every such person or persons so offending shall, on conviction before any justice of the peace or magistrate, on the oath of one credible witness, or on the confession of the party so offending, forfeit and pay any sum not exceeding five pounds nor less than forty-shillings, one half of which penalty shall be paid to the informer, and the other half to the poor of the parish or township in which such offence shall be committed.

Form of conviction.

XX. And, for the more easy and speedy conviction of offenders against this act, be it further enacted, That all and every justice and justices of the peace before whom any person shall be convicted of any offence against this act, shall and may cause the conviction to be drawn up according to the following form; *videlicet*,

'BE it remembered, That on the day of
'in the year of our Lord *A. B.*
'is convicted before me [*or*, us]
'one [*or*, two, *as the case may be*,] of His Majesty's justices of
'the peace for the [*here specify*
'*the offence, and the time and place when and where committed,*
'*as the case may be*] contrary to an act passed in the forty-ninth
'year of the reign of King George the third, intituled [*here insert*
'*the title of this act*]. Given under my hand and seal [*or*, our
'hands and seals,] the day and year first above written.'

And no *certiorari* or other writ or process for the removal of any such conviction, or any proceedings thereon, into any of His Majesty's Courts of Record at Westminster, shall be allowed or granted.

Appeal from conviction to the general quarter sessions.

XXI. And be it further enacted, That it shall and may be lawful to and for any person or persons so convicted by any justice or justices of the peace before-mentioned of any offence or offences against this act, within three calendar months next after such conviction, to appeal to the justices of the peace assembled at the general quarter sessions holden for the county, city, or place where the matter of appeal shall arise, first giving ten days' notice of such appeal to the person or persons appealed against, and of the matter

thereof, and entering into a recognizance before some justice of the peace for such county, city, or place, with two sufficient sureties conditioned to try such appeal, and for abiding the determination of the court therein; and such justices at the general quarter sessions shall, upon due proof of such notice having been given, and recognizance entered into, hear and determine the matter of such appeal, and may either confirm, or quash and annul the said conviction, and award such costs to either party as to them shall seem just and reasonable; and the decision of the said justices therein shall be final, binding, and conclusive; and no proceeding to be had or taken in pursuance of this act shall be quashed or vacated for want of form only, or be removed by *certiorari*, or any other writ or process whatsoever, into any of his Majesty's Courts of Record at Westminster or elsewhere, any law or statute to the contrary thereof in any wise notwithstanding.

XXII. Provided always, and be it further enacted, That the inhabitants of any parish, township, or place shall be deemed and taken to be competent witnesses for the purpose of proving the commission of any offence against this act, within the limits of such parish, township, or place, notwithstanding the penalty incurred by such offence, or any part thereof, is or may be given or applicable to the poor of such parish, township, or place, or otherwise for the benefit or use, or in aid or in exoneration of such parish, township or place.

Inhabitants may be competent witnesses.

XXIII. And be it further enacted, That all felonies, misdemeanors, and other offences under this act, shall and may be laid to be committed, and shall be tried in any city or county (being a county) where any such article, matter, or thing in relation to which such offence shall have been committed, shall have been found in the possession of the person committing the offence; or, if the same shall have been sold in foreign parts, then in the country or place in which the person selling the same shall reside.

Offences may be tried in the county where articles found, or if sold in foreign parts, where offenders reside.

XXIV. Provided always, and be it further enacted, That nothing in this act contained shall extend, or be construed to extend, to or be in force within the limits specified and directed in an act passed in the forty-eighth year of the reign of his present Majesty, intituled An Act for preventing the various Frauds and Depredations committed on Merchants, Ship-owners, and Underwriters, by Boatmen and others, within the jurisdiction of the Cinque Ports, and also for remedying certain Defects relative to the adjustment of Salvage under a Statute made in the Twelfth Year of the reign of Her late Majesty Queen Anne, or in any manner to affect any of the provisions of the said act; but the said recited act shall remain in full force within the limits therein specified, as if this act had not been passed.

Act not to alter the statute of 48 Geo. 3. c. 48.

XXV. Provided also, That nothing in this act contained shall extend, or be construed to extend, to repeal, take away, or alter any of the clauses, powers, or provisions contained in an act of parliament, made in the forty-eighth year of the reign of his present Majesty, intituled An Act for the better regulation of pilots, and of the pilotage of ships and vessels navigating the British seas, but that the said act shall remain in full force as if this act had not been passed.

Reservation of the statute of 8 Geo. 3. c. 104.

Reservation of the rights of the High Court of Admiralty.

XXVI. Provided also, and it is hereby further declared, That this act or any thing herein contained shall not extend, or be construed to extend, to the taking away, abridging, prejudicing, or impeaching in any manner whatever the jurisdiction of the High Court of Admiralty of England, or the jurisdiction of the Admiralty Court of the Cinque Ports, two ancient towns and their members, or of the Admiralty Court of the borough of Great Yarmouth, in the county of Norfolk, or of the Admiralty Court of the borough of Dunwich, in the county of Suffolk, or of the Admiralty Court of the borough of Southampton, in the county of Hants, or of the Admiralty Court of the borough of Southwold, in the county of Suffolk, or of the Admiralty Court of the borough of Lynn Regis, in the county of Norfolk; but that it shall and may be lawful for the said Courts respectively, and the judge or judges thereof for the time being, to have, use, exercise, and enjoy jurisdiction over all such matters, rights and offences as they have heretofore had, used, exercised, and enjoyed, as fully and effectually to all intents and purposes whatever, as if this act had not been made, any thing herein contained to the contrary thereof in any wise notwithstanding.

Reservation of the rights of the Crown, and of lords and ladies of manors.

XXVII. Provided also, and it is hereby enacted, That neither this act, nor any thing herein contained, shall any ways extend, or be construed to extend, to deprive, or in any ways prejudice the rights of His Majesty, his heirs or successors, or any claiming under them, or any of them, or any patentee or grantee of the Crown, or any lord or lords, or lady or ladies of any manor or manors whatsoever, but that such respective rights shall be enjoyed in as full, ample, and beneficial a manner, in every respect, as if this act had never been made.

Reservation of the rights of the Trinity House of Deptford Strond.

XXVIII. Provided also, and it is hereby further enacted and declared, That this act, or any thing herein contained, shall not extend, or be construed to extend, to the taking away, abridging, hindering, prejudicing, or impeaching of any grant, liberties, franchises, and privileges heretofore granted to and vested in the Corporation of the Trinity House of Deptford Strond, but that the said Corporation shall hold and enjoy the same, as fully and effectually, to all intents and purposes, as they might have done in case this act had never been made, any thing herein contained to the contrary thereof in any wise notwithstanding.

Reservation of the rights of the Trinity Houses of Kingston-upon-Hull, Newcastle-upon-Tyne, and Scarborough.

XXIX. Provided also, and it is hereby further enacted and declared, That this act, or any thing herein contained, shall not extend, or be construed to extend, to the taking away, abridging, hindering, prejudicing, or impeaching of any grant, liberties, franchises, and privileges heretofore granted to and vested in the Corporation of the Trinity House of Kingston-upon-Hull, or in the masters, wardens, and brethren of the Trinity Houses of Newcastle-upon-Tyne and Scarborough respectively, but that the said Corporation, and the said masters, wardens, and brethren, shall hold and enjoy the same, as fully and effectually, to all intents and purposes as they might have done in case this act had never been made, any thing herein contained to the contrary thereof in any wise notwithstanding.

Reservation of the rights of the city of London.

XXX. Provided also, and it is hereby further enacted and

declared, by the authority aforesaid, That nothing in this act shall extend, or be construed to extend, to prejudice or take away any right, property, authority, or jurisdiction of the mayor of the city of London, or of the mayor and commonalty and citizens of the city of London, to, in, and upon the Rivers of Thames and Medway.

XXXI. Provided also, and be it hereby further enacted, That nothing in this act contained shall extend, or be construed to extend, to those parts of the United Kingdom of Great Britain and Ireland, called Scotland and Ireland.

This act not to extend to Scotland or Ireland.

XXXII. And whereas it is expedient that the like means of conclusively adjusting and recovering the *quantum* of the monies or gratuities to be paid to the said several persons acting or being employed in the salvage of any ship or vessel, or the materials or stores belonging thereto, or goods or persons on board thereof, should subsist, and be by law applicable in cases where the salvors shall have acted under and by the employment and authority of any magistrate, or of the commander or other superior officers, mariners, or owners of any ship or vessel in distress, as are now by law provided for adjusting the *quantum* of such monies or gratuities which shall have become due in cases where application shall have been first made to the officers of the customs, or other the officer or officers in that behalf named and appointed in and by a certain act made in the twelfth year of the reign of Queen Anne, intituled An Act for preserving all such ships and goods thereof, which shall happen to be forced ashore or stranded upon the coasts of this kingdom, or any other of Her Majesty's dominions; and where such assistance shall thereupon have been rendered, in pursuance of the provision of that statute; be it therefore enacted, That from and after the 1st of August, 1809, all and every the means which in virtue of the said last-mentioned act subsist, and may now be by law applied for the conclusively adjusting, and for the recovering of the *quantum* of the monies or gratuities to be paid to the several persons acting or being employed in the salvage of any ship or vessel, or the materials or stores belonging thereto, or goods, in cases where application shall have been first made pursuant to the said act to officers of the customs, or other the officer or officers in that behalf mentioned, and assistance shall have been thereupon rendered and had in pursuance of the provisions of the said act, shall be by law applicable and available in like manner, to all intents and purposes, in cases where the salvors shall have acted under and by the employment and authority of any magistrate, or of the commander or other superior officers, mariners, or owners of any ship or vessel in distress, although no such application shall have been made to, nor any authority or assistance derived from any officers of the customs, or other the officer or officers in the said statute in that behalf mentioned; and thereupon upon payment or tender and refusal of the *quantum* of the monies or gratuities to be paid to the several persons who shall have acted or been employed in such salvage, or in case such payment or tender cannot be made, on security being given for the true payment thereof, to the satisfaction of the justices who shall have adjusted such *quantum* or gratuities, it shall not be lawful for any officer of the customs, or other person or persons having the possession or

For the better adjustment of salvage under the statute of 12 Anne, c. 18.

custody of such ship, vessel, materials, stores, or goods, any longer to retain the possession or custody of the same, or any part thereof, by reason or pretence of any claim or right to a compensation or gratuity of such salvage as aforesaid, or for having acted or been employed therein.

Public act.

XXXIII. And be it further enacted, That this act shall be deemed and taken to be a public act, and shall be judicially taken notice of as such by all judges, justices, and other persons whomsoever, without being specially pleaded.

Continuance of the act.

XXXIV. And be it further enacted, That this act shall continue in force for seven years from the passing hereof.

SCHEDULE to which this Act refers.

ON the day of in the year of our Lord before me at in the county of

[*Ship's name.*] *A. B.* [*Here insert the names of the salvors against and name the stores and other articles; (id est) anchors and cables, &c. as the case may be,*] certain goods and merchandizes lately found and taken possession of and belonging to the said ship whereof was master, and also against the said master and the owners, [*or, if the owners alone appear by themselves or agents, then leave out the master's name*] of the said goods and merchandize in a cause of salvage. [*Master's name.*] On which day appeared personally of and of who produced themselves as sureties for the said the master and for the owners of the said goods and merchandize, and submitting themselves to the jurisdiction of the High Court of Admiralty of England, bound themselves, their heirs, executors, and administrators, for the said master and owners of the said goods and merchandize, in the sum of of lawful money of Great Britain, unto the said to answer such salvage and expences, or the value of the goods as the case may be, as shall be hereinafter decreed by the said Court, according to the tenor of the act in that case made and provided; and, unless they shall so do, they hereby consent that execution shall issue forth against them, their heirs, executors, and administrators, goods and chattels, wherever the same shall be found, to the value of the sum above-mentioned.

This bail was duly taken, acknowledged, and received at the time and place above written, before me the undersigned commissioner; and I do believe and consider the persons above-mentioned sufficient security for the said sum of

APPENDIX OF FORMS.

No. I.

Form of a Bottomry Bond.

KNOW all men by these presents, that I, *A. B.*, commander and two-thirds owner of the ship Exeter, for myself, and *C. D.*, remaining third owner of the said ship, am held, and firmly bound unto *E. F.*, in the penal sum of two thousand pounds sterling, for the payment of which well and truly to be made unto the said *E. F.*, his heirs, executors, administrators, and assigns, I hereby bind myself, my heirs, executors, and administrators, firmly by these presents. In witness whereof I have hereunto set my hand and seal, this 14th day of December, in the year of our Lord 1796.

Whereas the above bound *A. B.* hath taken up and received of the said *E. F.* the full and just sum of one thousand pounds sterling, which sum is to run at *respondentia* on the block and freight of the ship Exeter, whereof the said *A. B.* is now master, from the port or road of Bombay on a voyage to the port of London, having permission to touch, stay at, and proceed to all ports and places within the limits of the voyage, at the rate or premium of twenty-five *per cent* (25 *per cent.*) for the voyage. In consideration whereof usual risks of the seas, rivers, enemies, fires, pirates, &c. are to be on account of the said *E. F.* And for the further security of the said *E. F.*, the said *A. B.* doth, by these presents, mortgage and assign over to the said *E. F.*, his heirs, executors, administrators, and assigns, the said ship Exeter, and her freight, together with all her tackle, apparel, &c. And it is hereby declared, that the said ship Exeter, and her freight, is thus assigned over for the security of the *respondentia* taken up by the said *A. B.*, and shall be delivered to no other use or purpose whatever until payment of this bond is first made, with the premium that may become due thereon.

Now the condition of this obligation is such, that if the above bound *A. B.*, his heirs, executors, and administrators, shall and do well and truly pay, or cause to be paid unto the said *E. F.*, or to his attornies in London legally authorised to receive the same, their executors, administrators, or assigns, the full and just sum of one thousand pounds sterling, being the principal of this

bond, together with the premium which shall become due thereupon, at or before the expiration of *ninety* days after the safe arrival of the said ship Exeter at her moorings in the river Thames; or, in case of the loss of the said ship Exeter, such an average as by custom shall have become due on the salvage; then this obligation to be void and of no effect, otherwise to remain in full force and virtue. Having signed to three bonds of the same tenor and date, the one of which being accomplished, the other two to be void and of no effect.

A. B. for self and *C. D.* } *L. S.*

Signed, sealed, and delivered, where no stamped paper is to be had, in the presence of } *G. H.* *I. K.*

No. II.

Form of a Bottomry Bill.

TO all men to whom these presents shall come I, *A. B.*, of Bengal, mariner, part-owner and master of the ship called the Exeter, of the burthen of five hundred tons, and upwards, now riding at anchor in Table-Bay, at the Cape of Good Hope, send greeting.

Whereas I, the said *A. B.*, part owner and master of the aforesaid ship called the Exeter, now in prosecution of a voyage from Bengal to the port of London, having put into Table-Bay, for the purpose of procuring provision and other supplies necessary for the continuation and performance of the voyage aforesaid, am at this time necessitated to take up, upon the adventure of the said ship called the Exeter, the sum of one thousand pounds, sterling monies of Great Britain, for setting the said ship to sea, and furnishing her with provisions and necessaries for the said voyage, which sum *C. D.*, of the Cape of Good Hope, master attendant, hath at my request lent unto me, and supplied me with at the rate of twelve hundred and twenty pounds sterling for the said one thousand pounds, being at the rate of one hundred and twenty-two pounds for every hundred pounds advances as aforesaid, during the voyage of the said ship from Table-Bay to London. Now know ye, that I, the said *A. B.*, by these presents, do, for me, my executors and administrators, covenant and grant to and with the said *C. D.*, that the said ship shall, with the first convoy which shall offer for England after the date of these presents, sail and depart for the port of London, there to finish the voyage aforesaid. And I the said *A. B.*, in consideration of the sum of one thousand pounds sterling to me in hand, paid by the said *C. D.*, at and before the sealing and delivery of these presents, do hereby bind myself, my heirs, executors, and administrators, my goods and chattels, and particularly the said ship, the tackle, and apparel

of the same, and also the freight of the said ship, which is or shall become due for the aforesaid voyage from Bengal to the port of London, to pay unto the said *C. D.*, his executors, administrators, or assigns, the sum of twelve hundred and twenty pounds, of lawful British money, within thirty days next after the safe arrival of the said ship at the port of London, from the same intended voyage.

And I, the said *A. B.*, do, for me, my executors and administrators, covenant and grant to and with the said *C. D.*, his executors and administrators, by these presents, that I, the said *A. B.*, at the time of sealing and delivering of these presents, am a true and lawful part-owner and master of the said ship, and have power and authority to charge and engage the said ship with her freight, as aforesaid; and that the said ship, with her freight, shall at all times after the said voyage be liable and chargeable for the payment of the said twelve hundred and twenty pounds, according to the true intent and meaning of these presents.

And, lastly, it is hereby declared and agreed by and between the said parties to these presents, that in case the said ship shall be lost, miscarry, or be cast away before her arrival at the said port of London from the said intended voyage, that then the payment of the said twelve hundred and twenty pounds shall not be demanded, or be recoverable by the said *C. D.*, his executors, administrators, or assigns, but shall cease and determine, and the loss thereby be wholly borne and sustained by the said *C. D.*, his executors and administrators; and that then and from thenceforth every act, matter, and thing herein mentioned on the part and behalf of the said *A. B.* shall be void, any thing herein-contained to the contrary notwithstanding.

In witness whereof the parties have interchangeably set their hands and seals to four bonds of this tenor and date, one of which being paid, the others to be null and void.

At the Cape of Good Hope, this 15th day of November, in the year of our Lord 18

Witness { *E. F.* *G. H.* *I. K.* } *A. B.* (*L. S.*)

No. III.

The Form of a Respondentia Bond on a Voyage to the East Indies.

KNOW all men by these presents, that we, James Peter Fearon, commander of the ship Belvidere in the service of the Honourable East India Company, and Peter Douglas, of Fitzroy-square, are held and firmly bound to Hans Busk, of New Broad-street,

London, merchant, in the sum or penalty of *fifteen hundred pounds* of good and lawful money of Great Britain, to be paid to the said Hans Busk, or to his certain attorney, executors, administrators, or assigns; to which payment well and truly to be made we bind ourselves, jointly and separately, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, dated this 4th day of May, in the Forty-first year of the reign of our Sovereign Lord George the Third, by the grace of God of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, and in the year of our Lord 1801.

Whereas the above named Hans Busk has, on the day of the date above written, advanced and lent unto the said James Peter Fearon, and Peter Douglas, the sum of seven hundred and fifty pounds, upon the goods and merchandizes, and effects laden and to be laden on board the good ship or vessel called the Belvidere, of the burthen of nine hundred and eighty-seven tons or thereabouts, now riding at anchor in the river of Thames, outward bound to China, and whereof James Peter Fearon is commander, by his acceptance of a bill of exchange to that amount at four months' date for the account of them the said James Peter Fearon, and Peter Douglas: Now the condition of this obligation is such, that if the said ship or vessel do and shall with all convenient speed proceed and sail from and out of the said river of Thames, on a voyage to any port or place, ports or places in the East Indies, China, Persia, or elsewhere beyond the Cape of Good Hope, and from thence do and shall sail, return, and come back into the said river of Thames, at or before the end and expiration of thirty-six calendar months, to be accounted from the day of the date above written, and there to end her said intended voyage, (the dangers and casualties of the seas excepted;) and if the said James Peter Fearon and Peter Douglas, or either of them, their or either of their heirs, executors, or administrators, do and shall, within thirty days next after the said ship or vessel shall be arrived at her moorings in the said river of Thames, from her said intended voyage, or at or upon the end and expiration of the said thirty-six calendar months, to be accounted as aforesaid, (which of the said times shall first and next happen,) well and truly pay or cause to be paid unto the said Hans Busk, his executors, administrators, or assigns, the full sum of one thousand and twenty pounds of lawful money of Great Britain, together with thirteen pounds ten shillings of like money per calendar month for each and every calendar month, and so proportionably for a greater or lesser time than a calendar month, for all such time, and so many calendar months, as shall be elapsed and run out of the said thirty-six calendar months over and above twenty calendar months, to be accounted from the day of the date above written; or if in the said voyage, and within the said thirty-six calendar months, to be accounted as aforesaid, an utter loss of the said ship or vessel by fire, enemies, men of war, or any other casualties, shall unavoidably happen, and the said James Peter Fearon, and Peter Douglas, their heirs, executors, or administrators, do and shall within six calendar months next after such loss well and truly account for (upon oath if required,) and pay unto the said Hans Busk, his executors, ad-

ministrators, or assigns, a just and proportionable average on all the goods and effects of the said James Peter Fearon carried from England on board the said ship or vessel, and the net-proceeds thereof, and on all other goods and effects which the said James Peter Fearon shall acquire during the said voyage for or by reason of such goods, merchandizes, and effects, and which shall not be unavoidably lost, then the above written obligation to be void, and of none effect, else to stand in full force and virtue.

No. IV.

The Form of an Instrument of Hypothecation of Ship and Cargo.

KNOW all to whom this instrument of bond and bill of maritime risk and bottomry may come, that in the year from the birth of our Lord Jesus Christ 1801, on the 31st day of the month of January, in the city of Lisbon, in my office personally appeared Jacomo Mazzola, captain of the Imperial ship called the Gratitudine, whom I know to be the real person; and he declared to me, the notary, in the presence of the witnesses hereinaftermentioned, that within twenty-four hours after the arrival of his said ship at London, or any other port, and previous to beginning to make any delivery of the cargo at the port aforesaid, or any other port, that he the captain, or whomsoever may act in lieu of him, or in case of his absence, or perform the duties of his said quality, shall or will pay by this bill of risk, sea exchange, and bottomry, to Francis Manoel Calvert, professed in the order of Christ, or to his order, the sum of five thousand two hundred and seventy-three pounds twelve shillings sterling, principal and premium of risk and sea exchange, at the rate of 16 *per cent.*, the which principal he acknowledged to have received here of the said Francis Manoel Calvert, in the good current money of this realm, under the denomination of true and legitimate money of sea-exchange and bottomry, on the hull, keel, and appurtenances of the aforesaid ship, and therewith to supply the wants of the repairs, caulking, and of the cargo of the same, on which he had effectively invested it; the said Calvert taking upon himself, and in consideration of the aforesaid premium of 16 *per cent.* voluntarily agreed for and settled between them, to run the sea risk on the said hull, keel, and appurtenances, and cargo of the said ship, in her ensuing voyage, which the said captain is about prosecuting from this port of Lisbon to that of London; these being the risks which the aforesaid Francis Manoel Calvert takes on himself, and is to run, such as of the sea, winds, fire, stranding, and shipwreck, enemies, and false friends, detentions of princes, and reprisals, during the whole of the said voyage, excepting nevertheless those of barratry of the master, and of average as well particular as general, the which are expressly excluded; the which risk shall commence to run from the hour the ship shall leave her first anchor to set sail from this port to that of London, and shall cease in twenty-four hours after having come to an anchor; and,

for the ready payment of the aforesaid sum, he the captain binds himself, and his effects in general, dues and funds, both in actual possession and future, and by special mortgage, the cargo, freights due, or that may become due; and, in case of failure of the prompt payment in due time, he binds himself under this clause of mortgage to pay to him or his order, for all the delay until full payment, at and after the rate of 6 *per cent. per annum*; and there being also present Andrew Belucci, mate of the said ship, by whom it was declared that, in case of the absence of the aforesaid captain, he bound himself to fulfil the contents of this bond they thus executed and accepted, after these presents being read to them, and I the notary, in the name of whomsoever it may concern, being absent; to all which were witnesses present, Joav Pedro Rocks, who also acted as interpreter as well for the captain as for the mate, he being there vice-consul, and Manoel Eugenio Coetho, who together with the parties signed thereto; I, Joge de Almeida Rorig, the notary wrote it; Jacomo Mazzola, Andrew Bellucci, Joav Pedro Rocks, Manoel Eugenio Cactho; and J. Joge de Almeida Rorig, notary public of notes in the city of Lisbon and its district of His Royal Highness the Prince Regent our Lord, whom God preserve, caused this instrument to be transcribed from my book of notes, to which I refer myself, and have subscribed it, and signed it in public form.

Frahcis Manoel Calvert. { In testimony of the truth, Joge de Almeida Rorig, whose handwriting is certified by Francis Arbouin, Vice-Consul.

No. V.

Stipulation for the return of a Ship.

MARY ANN.

12th January, 18

ON which day Bogg exhibited as proctor, and made himself a party for George Goodwin Hope, master of the said ship Mary Ann; and produced for sureties Josiah Culmer, of Wapping High Street, mathematical instrument-maker, and James Powell, of the same place, undertaker, who, submitting themselves to the jurisdiction of this Court, bound themselves, their heirs, executors, and administrators, for the said George Goodwin Hope, in the sum of six hundred and eighty-four pounds of lawful money of Great Britain, being double the appraised value of two eighth parts of the said ship, unto William Fennings, of Rood-lane, Fenchurch-street, London, merchant, and Philip Fennings, of Harwich, in the county of Essex, owners of the said two eighth parts or shares of the said ship, for the return of the said ship, to the amount of the shares of the said William Fennings and Philip Fennings; and,

unless they shall so do, they do hereby severally consent that execution shall issue forth against them, their heirs, executors, and administrators, goods and chattels, wheresoever the same shall be found, to the value of the sum aforementioned; which caution the said surrogate received on the report of John Crickett, marshall of this Court, as to the sufficiency of the said sureties; and, at the petition of Bogg, decreed the said ship to be released from the arrest.

Present,

BEDFORD.

No. VI.

The Form of a Charter-party.

London, the ——— day of - 1820.

MEMORANDUM of Charter.—It is this day mutually agreed between *A. B.* master [*or owner*] of the good ship or vessel called the ———, of the burthen of ——— tons, or thereabouts, now lying in the port of London; and *C. D.*, of ———, merchant; that the said vessel, being made by the said master tight, staunch, strong, and every way fitted for the voyage, shall, with all convenient speed, sail and proceed to ———, or so near thereto as she can safely get, for the purpose of loading from the factors of the said merchant a full and complete cargo of ———, which the said merchant binds himself to furnish and bring alongside the said vessel there; and the said master shall there load and stow on board the said vessel such goods, or so much thereof as she shall be able reasonably to carry over and above her tackle, apparel, provisions and furniture; and the said vessel being so loaded with the said goods, the said master shall, with all convenient speed, proceed therewith to the port of ———, or so near thereunto as she can safely get, and there make right and true delivery of the same to the correspondents, agents, or assigns of the said merchant (the acts of God or the King's enemies, detentions and restraints of kings, princes, rulers, and republics, fire, the dangers and accidents of the seas, rivers, and navigation, and all and every other unavoidable dangers and accidents, always excepted;) on being paid for freight the sum of ——*l.* The freight to be paid on unloading and right delivery of the cargo. The said merchant to be allowed ——— lay or running days (if the ship be not sooner despatched) for loading the said cargo at ———, and for unloading the same at ———, and to detain the said ship ——— days on demurrage, over and above her lay days, at the rate of ——*l.* per day. The penalty for non-performance of this agreement on either side, to be ——*l.*

Memorandum for charter.

Agreement for seaworthiness of ship.

Furnishing and loading cargo.

Carriage and delivery thereof.

Exception.

Freight and demurrage.

Penalty.

A. B.
C. D.

No. VII.

Form of Charter-party of Affreightment.

Charter-party of affreightment.

THIS charter-party of affreightment, indented and made the —— day of ———, in the year of our Lord, 1820, between *A. B.*, owner [*or master*] of the ship or vessel called the ———, of the burthen of ——— tons or thereabouts, now lying in the port of London, of the one part; and *C. D.*, of London, merchant, freighter of the said ship or vessel, of the other part, witnesseth, that the said owner [*or* master] for the considerations hereinafter-mentioned, hath granted, and to freight letten, and by these presents doth grant and to freight let, unto the said merchant, (who hath accordingly hired and taken to freight, and by these presents doth hire and take to freight,) the said ship or vessel for the voyages, and upon the terms and conditions following, (that is to say) The owner of the said ship or vessel [*or* the said master] shall and will forthwith render the said ship or vessel tight, staunch, strong, properly rigged, sufficiently manned, and in every respect fit for navigation, and to perform the outward and homeward voyages hereinafter mentioned; and shall thereupon with all convenient speed receive on board, load, and stow in a regular and proper manner all such goods and merchandises as shall or may be sent by the said freighter alongside the said ship or vessel in the said port of London, not exceeding what the said ship or vessel can conveniently and safely carry over sea, besides her provisions, tackle, and appurtenances, (the master's cabin and the usual and necessary room for the ship's crew excepted) and being so laden, and being also despatched, the said master shall and will, with the then first favourable wind and opportunity, set sail and depart without delay in the said ship or vessel from the said port of London, and proceed with the next convoy to the port of ———, and upon his arrival there address himself to the agents or correspondents of the said freighter; and, as soon after as may be, make discharge, and right and true delivery of the said goods and merchandises unto the agents, correspondents, or assigns of the said freighter, according to the bills of lading, and so to end of the said outward voyage. And, after delivery of the said outward cargo as aforesaid, the said master shall and will forthwith render the said ship or vessel in all respects fit to receive her homeward cargo, and perform her homeward voyage. And the said master shall and will thereupon, with all convenient speed, receive on board, load, and stow in a regular and proper manner all such goods and merchandises as shall and may be sent alongside the said ship or vessel, at the said port of ———, by the said freighter, his correspondents or agents, not exceeding what the said vessel can conveniently and safely carry over sea (besides and except as herein-before-mentioned and excepted); and being so laden, and being also again despatched, the said master shall and will with the

Fitting the ship, for her outward voyage.

Loading the goods.

Sailing of the ship.

Delivery of the outward cargo.

Refitting for the homeward voyage.

Loading of homeward cargo.

Sailing on homeward voyage.

then first favourable wind and opportunity without delay, set sail and depart from the said last mentioned port in the said ship or vessel, and proceed therewith direct to the said port of London; and, upon arrival in the London Docks, make discharge and right and true delivery of the said homeward cargo, unto the said freighter or his order, according to the bills of lading; and so end the said homeward voyage, (the acts of God and the King's enemies, the dangers and accidents of the seas, rivers, and navigation, the restraints and detentions of kings, princes, rulers, and republics, and all and every other unavoidable dangers and accidents, excepted). And the owner (or master) for himself his executors and administrators, doth hereby covenant, promise, and agree, to and with the said freighter, his executors and administrators, that the said master shall not, nor will, in either the said outward or homeward voyage, take or load on board, or suffer to be taken or loaden on board, the said ship or vessel, any goods, merchandises, packets, letters, or parcels whatever, from any other person or persons whomsoever, other than the said freighter, without his consent and permission, or the consent and permission of his agents, correspondents, or assigns in writing for that purpose, first had and obtained. And the said freighter for himself, his executors and administrators, doth hereby covenant, promise, and agree to and with the said master, his executors and administrators, that he the said freighter shall and will procure, and cause to be sent alongside the said ship or vessel, to be loaded on board thereof, such outward and homeward cargoes as aforesaid, and procure the necessary licences for the same. And also, that he shall and will well and truly pay or cause to be paid unto the said owner, [or master,] his executors or administrators, the sum of £———, in full, for the freight of the said outward cargo, upon the right and true delivery thereof; and the sum of £———, in full for the freight of the said homeward cargo, upon the right and true delivery thereof as aforesaid. And which said sums of money shall be in entire satisfaction, and in lieu of all primage and average, pilotage, and port-charges whatever, for the said outward and homeward voyages. And it is hereby, covenanted and agreed, by and between the said parties, that the said merchant shall be allowed ——— lay or running days in the whole, for loading and unloading the said outward and homeward cargoes, to commence and be computed from and exclusive of the days after the said master shall be ready to take in and discharge his said respective cargoes, and notice given thereof to the freighter, his agents, correspondents, or assigns. And it is further agreed by and between the said parties, that it shall be lawful for the said freighter, or his agents, correspondents, or assigns, to keep and detain the said ship or vessel on demurrage, for the space of ——— working days, over and above the before-mentioned running or lay days, upon paying the said master, his executors or administrators, at the rate of £——— sterling per day, for each and every of the said ——— days of demurrage. And it is hereby further mutually covenanted and agreed by and between the said parties that the said freighter shall be at liberty to place and send on board the said vessel a supercargo during the said voyages, for whose passage the

Delivery of the homeward cargo.

Exceptions.

Masters covenant not to take any goods, &c. but freighters.

Freighter covenants to procure cargoes, &c.

To pay freight.

Primage and average, &c.

Demurrage.

Liberty to send on board a supercargo.

Penal clause.

said master shall make no charge whatever (the said supercargo, however, finding and providing himself in all necessaries during the said voyages); and for the due performance of all and singular the covenants, conditions, and agreements herein contained, the said parties mutually bind themselves, their executors and administrators, in the penal sum of £——— firmly by these presents. In witness whereof the said parties have hereunto set their hands and seals in London the day first above written.

A. B. (*L.S.*)
C. D. (*L.S.*)

Signed, sealed, and delivered, being first duly stamped in the presence of *E. F.*

No. VIII.

The Form of a Bill of Lading.

Bill of lading.

N. B. shipped, in good order, and well conditioned, by *A. B.*, merchant, in and upon the good ship called ———, whereof *C. D.* is master, now in the river Thames, and bound for ——— the goods following, *viz.* [*here describe the goods*] marked and numbered as per margin, to be delivered in the like good order and condition at ——— aforesaid, (the acts of God, the King's enemies, fire, and all and every other dangers and accidents of the seas, rivers, and navigation, of whatever nature and kind soever excepted,) unto the said *A. B.*, or his assigns, he or they paying freight for the said goods at the rate of ——— *per*———, with primage and average accustomed. In witness whereof I the said master, of the said ship, have affirmed to three bills of lading of this tenor and date; any one of which bills being accomplished, the other two are to be void.

Exception.

Rate of freight, &c.

Dated at London, this day of 1820.

C. D.

ADDENDA.

Wool.—Colonial Trade.

Vol. I. p. 47.

The 59 Geo. III. c. 14. continues the permission to export wool from the British Plantations in America to the United Kingdom, until the 1st day of July, 1823.

Slave Trade.

Vol. I. p. 125.

The 59 Geo. III. c. 16. gives a parliamentary sanction to, and carries into effect, the provisions of the treaty with the king of the Netherlands for the abolition of the slave trade. Dated May, 1818.

Slave Trade.—Portugal.

Vol. I. p. 122.

The 59 Geo III. c. 17, makes some amendments in the 58 Geo. III. c. 85, passed for preventing the traffic in slaves, in pursuance of a treaty between Portugal and Great Britain.—See the Act.

Salt.—From the Bahamas, &c.

Vol. I. p. 53. See likewise Rules and Exceptions, p. 63.

The 59 Geo. III. c. 18, makes the permission to American ships, coming in ballast, to export salt from certain

ports in the Bahamas, perpetual. This privilege was given by certain acts, the principal of which was the 44 Geo. III. c. 101.

Fisheries.

Vol. I. p. 193.

The 59 Geo. III. c. 38, enables His Majesty to make regulations with respect to the taking and curing fish on certain parts of the coasts of Newfoundland and Labrador, according to a convention between Great Britain and the United States of America.

Convention of Commerce between the United States of America and Great Britain.

Vol. I. p. 45.

The 59 Geo. III. c. 54 was passed to give effect to the treaty of commerce between Great Britain and America; dated October, 1818,—by which the previous commercial treaty, of July, 1815 (which expired in 1819) is extended, upon the same terms, to the year 1828. See the commercial treaty, Chap. II. on the Colonial Trade, Vol. I. p. 45, *et seq*. As to the commercial treaty with Portugal, see sect. 8 of this act. See likewise Vol. I. Part I. Chap. III. p. 140.

Bermuda.—American Ships.

Vol. I. p. 52, and see Rules and Exceptions, p. 62.

The 59 Geo. III. c. 55, adds rosin to the articles allowed to be imported from the United States into Bermuda; and permits American ships to export, under the restrictions of the previous acts, all articles the produce and manufacture of the said island, and all articles which have been legally imported into Bermuda in British ships. See Introduction—Colonial Trade, Rules and Exceptions, *passim*.

Seamen's Wages.

Vol. I. p. 468.

59 Geo. III. c. 58.—See Appendix for this act, which was passed to facilitate the recovering of seamen's wages.

East Indies.

Vol. I. p. 88., and Chap. III. *passim.*

59 Geo. III. 74., allows the importation of Tobacco from the East Indies, and other places within the limits of the Company's charter, in British vessels.

Fisheries.

Vol. I. p. 193.

59 Geo. III. c. 109. contains many important regulations and provisions (for which see the act) for the encouragement and improvement of the Irish Fisheries.

Levant Company.

Vol. I. p. 147.

The 59 Geo. III. c. 110. contains certain enactments (for which see the statute) to remove doubts respecting the dues payable to the Levant Company.—See Chap. IV. on the European Trade.

Southern Whale Fishery.

Vol. I. p. 204.

The 59 Geo. III. c. 113. continues the premiums alluded by 55 Geo. III. c. 45., to ships engaged in the Southern Whale Fishery.—See Chapter VI. on the Fisheries, *passim.*

Slave Trade.

Vol. I. p. 106.

The 59 Geo. III. c. 120. contains enactments for establishing a registry of colonial slaves in Great Britain, and

for making further provision with respect to the removal of slaves from British colonies.

New South Wales.

Vol. I. p. 88.

The 59 Geo. III. c. 122. permits vessels of a certain tonnage to trade between the United Kingdom and New South Wales.—See East India Company, Part I. Chapter III. p. 88. *et sequenter.*

East India Company.

Vol. I. p. 88.

The 59 Geo. III. c. 125. was passed to admit certain goods, imported from the East Indies, to enter and pay duty without being warehoused, and to permit the exportation of certain East India goods to Guernsey and Jersey, and the removal of certain East India goods to Liverpool, Lancaster, Bristol, and Glasgow, for exportation.—See the statute.

Malta and Gibraltar East India Trade.

Vol. I. p. 88.

As to the trade with the East Indies by Malta and Gibraltar, see 57 Geo. III. c. 36. The notice of this act was omitted in its proper place, in Part I. Chap. III. upon the East India Trade, p. 88. *et sequenter.*

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